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FEDERAL PROTECTION OF INDIAN RESOURCES

HEARINGS

BEFORE THE

SUBCOMMITTEE ON
ADMINISTRATIVE PRACTICE AND PROCEDURE

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

ADMINISTRATIVE PRACTICES AND PROCEDURES RELATING
TO PROTECTION OF INDIAN NATURAL RESOURCES

PART 2

NOVEMBER 30, 1971
WASHINGTON, D.C.

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ADMINISTRATIVE PRACTICES AND PROCEDURES RELATING TO PROTECTION OF INDIAN NATURAL RESOURCES

TUESDAY, NOVEMBER 30, 1971

U.S. SENATE,
SUBCOMMITTEE ON ADMINISTRATIVE PRACTICE AND
PROCEDURE OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:35 o'clock a.m., in room 4200, New Senate Office Building, Senator Edward M. Kennedy (chairman of the subcommittee) presiding.

Present: Senator Kennedy (presiding).

Also present: James Flug, chief counsel; and Thomas Susman, assistant counsel.

Senator KENNEDY. The subcommittee will come to order.

At the opening of the subcommittee hearings last month into Federal procedures for protecting Indian rights and natural resources, I projected that the hearings would bring out "in the clearest terms the Federal Government's flagrant abdication of its trust responsibilities to the Indian people."

Over two dozen witnesses representing Indian tribes discussed instance after instance where the United States, acting through the Departments of Justice and Interior, had been responsible not for protecting Indian resources but for bringing about the misuse, exploitation, and diminution of those resources.

In the light of these revelations, one conclusion stands out: the Indian people are today experiencing the conscious, calculated suppression of their rights through malfeasance and nonfeasance by Federal officials. Despite rhetoric to the contrary, Indians are the objects of a continuing policy of termination brought about through destruction of the resource base upon which their future depends.

> "The numerous sanctimonious expressions to be found in the acts of Congress, the statements of public officials, and the opinions of courts respecting 'the generous and protective spirit which the United States properly feels toward its Indian wards' and the 'high standards for fair dealing required of the United States in controlling Indian affairs' are but demonstrations of a gross national hypocirsy."

These words do not represent the accusations of red-power advocates venting hostility against the Federal Government. They are the conclusion of a Federal judge examining the Government's activities related to Indian water rights.

The President knows about this hypocrisy. He admitted in his July 1970 Indian message that his own executive departments are guilty of an intolerable conflict of interest in dealing with Indian rights—a conflict in which Indians almost always come out losers. But the conflict persists.

The courts know this. They have characterized the Government's dealing with Indian resources as involving "mistakes," "poor judgment," "overlooking or ignoring of the true measure of the Indians' rights," and "lack of bargaining skill or determination." But the bureaucracy which earned those descriptions remains intact; and, most importantly, the Indian people themselves—newly aware, newly vocal, newly in the American conscience—know this. They have adjudged the United States Government consistently and currently guilty of the grossest maladministration of its trusteeship in failing to fulfill its legal responsibilities toward them.

Earlier this month in Reno, Nev., the National Congress of American Indians met in annual convention. The favorite story in circulation concerned an opinion poll in which 15 percent of the Indian people agreed that the United States should get out of Vietnam immediately; 85 percent thought it should get out of America even faster.

In the Government's dealing with the Indian people there are credibility gaps and information gaps of vast proportion. "I don't believe what people say any more," Fort Hall Tribal Chairman Kesley Edmo told this subcommittee last month. "It is what they do in regard to the different statements that are made." This attitude accurately reflects the general sentiment in Indian country these days, and, of course, the administration itself has fostered the same attitude with similar words: "Watch what we do and not what we say."

Our purpose in these hearings is both to separate the doing from the saying in the past, and to assure that the doing catches up with the saying in the future. President Nixon in his Indian message in 1970 decried the conflict involved where the Justice and Interior Departments "must at the same time advance both the national interest in the use of land and water rights and the private interests of Indians in land which the Government holds as trustee." And yet within 6 months the Justice Department's briefs in the landmark *Eagle River* case failed substantially to distinguish the Government's public water rights from Indian water rights, private in nature.

On July 6, 1969, Interior Secretary Hickel told Pyramid Lake Tribe representatives that his department was committed to stabilizing Pyramid Lake; the very next day the Secretary announced a plan that would drop the lake by 125 feet.

Earlier this fall, Interior Secretary Morton announced the establishment of an Office of Indian Water Rights, specifying that "$2 million will be funded for the first year's operation" of the Office. I understand that as of now, however, it looks doubtful that over $500,000 will be available for the Office in its first year and even that will be taken from other important program funds.

The information gap in Indian affairs is also acute and has been for decades. Time and again actions are taken by the Government as trustee for Indians without the supposed beneficiaries even knowing about them.

The *Winters* decision in 1908 recognized the existence of paramount and immemorial Indian reserved rights to the use of waters flowing through their lands. But only in the past few years have

Indians learned that this decision was potentially applicable to all Indian reservations; and only recently have they discovered that their tribes may possess valuable water rights in rivers being diverted or pumped dry for non-Indian uses. The courts have seen fit to require law enforcement agencies to inform a criminal defendant of his rights at the earliest moment; the Interior Department still hides the fact that many tribes to which it owes a direct fiduciary duty have water rights or that these rights are threatened.

Reclamation legislation with possible adverse impacts on the Yakima Indian Nation was recently sent to Congress by the Interior Department without notice to the tribe or the Bureau of Indian Affairs.

The Winnebago Tribe first learned of the Army Engineers' plans to take their river frontage when the tribe received formal condemnation notice served by the U.S. attorney.

The Reclamation Bureau began selling water from Yellowtail Dam claimed by the Crow Tribe while the tribe was preparing plans of its own to sell the water.

The Colorado River tribes are still trying to get sufficient information from the Interior Department to assess the effects of the central Arizona reclamation project on their water rights.

In one instance related to the subcommittee last month, a former Attorney General advised the Secretary of the Interior of an erroneous survey that deprived the Flathead Tribe of 12,000 acres of its land, but, in the letter containing this advice, he requested that the tribe not be notified of the error.

The credibility and information gaps can only be closed by action; and action, not rhetoric, is the key to assessing the Government's fulfillment of its responsibilities to the American Indian.

But if action is to be the touchstone of this administration's dealings in Indian matters, the Indian people might as well start down another trail of tears, for the only action they have seen in the natural-resource area has been inaction, delayed action, inadequate action, and hostile action.

"A close analysis of the entire period from 1887 until 1970 would fail to disclose a single instance where the Department of the Interior or the Indian Bureau took any positive action to protect the water rights" of the Spokane, Coeur d'Alene, or Kalispel Tribes, according to spokesmen for those tribes at our hearings last month. Benign neglect in the Indian field is obviously not the invention of the present administration.

Pyramid Lake has been dropping over a foot each year for the past 60 years, although the tribe has repeatedly requested the Justice Department to seek an adjudication of its water rights. Last year they finally got some litigation. The tribe was the plaintiff, however, suing the Attorney General and the Secretary of the Interior.

Delay is characteristic of what little action there has been on many fronts. Justice finally filed a fishing rights suit on behalf of the Indians of Washington State over a year ago following riots, mass arrests, shootings, and the public release of Interior Department memorandums suggesting that the disturbances resulted from the Government's failure to file in the Indians' behalf. Over a year later, by the way, that case has not progressed beyond the pleadings.

Courts have been helpful in cutting short Government delays in protecting Indian rights. A Federal district court in California ordered the Justice Department to file a written statement whether it intended to represent the Rincon Band of Mission Indians in water rights litigation, after the Department had told the court that, after years of deliberations, it was still considering what to do. And most recently the Supreme Court asked the Justice Department to file a brief in an Indian tax case, a request that had fallen on deaf ears when it came some time before from the Agua Caliente Tribe.

Even when action is finally taken by the Federal Government, it too often proves inadequate. The *Eagle River* adjudication clearly threatened Indian rights, and this fact was brought to the Justice Department's attention forcefully. Yet, in the face of a State superior court opinion and numerous opposing briefs assuming involvement of Indian rights, and relying itself on Indian cases for precedent, Justice's efforts to deal with Indian interests in a cryptic footnote to the Supreme Court fell far short of the minimum responsibility to its Indian wards required of the Government.

The President's answer to the whole problem of institutional conflicts of interest has been reliance on a bill to establish a new Indian Trust Counsel Authority, and thus to avoid and evade immediate resolution of daily conflicts. Yet that very bill at one time ended up on the bottom of the Interior Department's list of legislative priorities.

Dozens of tribal requests for water rights inventories, which the Bureau of Indian Affairs staff believed would require a minimal $1.75 million appropriation, were met by an Interior Assistant Secretary's suggestion that $100,000 constituted a more appropriate figure to respond to tribal needs.

Finally, Government action on Indian resources has sometimes been characterized by a hostility matched only by cavalry charges of the last century.

In a recent case, a U.S. attorney served the Winnebago Tribe with notice of condemnation proceedings, giving the tribe 20 days to respond. The tribe asked the Justice Department for representation, as Federal law provides, but was refused. It then tried to hire private counsel, but the U.S. attorney opposed approval of the attorney's contract. After the tribe's answer date had to be extended, the U.S. attorney then argued that the tribe's answer should be dismissed because it wasn't filed on time.

Justice likes to handle things its own way. Despite Indian outcries, it has opposed intervention of two pueblos in litigation on the Rio Grande and of the Pyramid Lake Tribe in the *Alpine* adjudication where their rights were being threatened. Justice opposes as a matter of course Indian claims filed with the Claims Commission, and then adjusts its posture in other cases, even where it is representing the Indians, to conform with its claims positions.

The list is almost endless: The Bureau of Indian Affairs sanctioning destructive timber practices on the Quinault Reservation; the Bureau of Land Management awarding Mohave land to California without the tribe's knowledge; the Bureau of Reclamation methodically cutting off access of five Lower Colorado River tribes to their river frontage.

In fact, the Reclamation Bureau, in the Indian people's eyes, is the present-day institutional embodiment of General Custer.

These illustrations are but a few of those that have come to my attention since this subcommittee initiated its investigation some months ago. Whatever the specific facts, each instance involves the same results:

Whenever Indian rights come into conflict with the interests of the Bureau of Reclamation, the Army Engineers, the Forest Service, or the Bureau of Land Management, Indian rights are lost.

Whenever Indian resources are desired by non-Indians, especially commercial interests or State governments, those resources are appropriated for those non-Indian users.

Whenever Indians must depend on the Department of the Interior for information, Indians go uninformed.

Whenever Indians must depend on the Department of Justice for representation, Indians go unrepresented.

The Department of the Interior, invested with a sacred trust responsibility of preserving and protecting Indian land and water, has from the very beginning presided over the transfer of Indian resources into the hands of non-Indians. The erosion of the Indian land base—over 90 million acres in less than 80 years—continues today under Interior's watchful eyes and helping hands.

The Department of Justice, charged with representing Indians and affording legal protection to their interests, has been a department of injustice for the first Americans.

We talk a lot about law and order these days. We are especially concerned with protecting our property, our pocketbooks, our television sets, our cars, from being taken from us. We can't even conceive of the theft of our land or our water supply. Well, Indians are American citizens, too, and their property is entitled to the same protection our Government guarantees non-Indians.

The public thinks that the last taking of Indian land or water took place 100 years ago. But Indian land and water are still being wrongfully taken right now. Law and order apparently have not reached Indian country. Laws establishing and providing for protection of Indian resources remain unenforced; orders affirming Indian ownership of their resources go unsigned. Often the Federal Government—law enforcer and trustee of Indian property—presides over the taking of that property, rendering meaningless for Indian citizens the guarantees of due process of law in our Constitution.

Indians aren't asking for welfare or handouts; they are merely asking for performance by the United States of its part of the bargains and agreements under which the Indians gave up most of their lands.

The American public must understand that the taking of Indian land and water, the breaking of solemn promises which they have read about in history books, continues today. For, once they understand, I am confident the American public will want no part of it. They will want their Government to live up to its promises, especially its promises to the original inhabitants of this land who have already suffered so much from the white man's misdeeds.

Public sentiment and nothing else was responsible for the administration's and Congress' turnabout on returning Blue Lake to the Taos Pueblo and on providing a just settlement of Alaska Natives' claims. Our record contains dozens of issues of similar importance to the Indian people, and I am hopeful that similarly favorable action by the Government and the Congress will be forthcoming on these.

I understand Mr. Kashiwa is not going to be with us today because of illness. I understand also that he is going to be named to a judgeship in the Court of Claims. I am confident the two have nothing to do with one another, so we will convey our wishes for speedy recovery to Mr. Kashiwa and our congratulations to him on his appointment.

If there are any questions today that require further answer from Mr. Kashiwa, we will be able to submit them to him in writing, or at the confirmation hearing.

Senator Tunney has asked me to express his regrets at being delayed this morning, but he has been detained on Senate business elsewhere. He has a statement that he wanted to deliver here, which we will include in the record at this point.

(The statement of Senator Tunney follows:)

STATEMENT OF SENATOR JOHN V. TUNNEY

Ambrose Bierce once described politics as the "conduct of public affairs for private advantage." In the case of Indian rights I think we might well rephrase that to the conduct of private affairs for public advantage—for at one time or another, in all levels of proceedings, the Justice and Interior Departments have failed to distinguish between the private right of the Indians and public or other private rights to use of natural resources.

The American Indian reservations of the Western United States contain invaluable natural resources and economic development of these reservations is inseparable from the rights of the Indians to the accessibility and use of water. Even though, going back as far as the 1832 case of *Worcester* v. *Georgia*, when the Justice and Interior Departments freely assumed a trustee relationship with the Indians, case after case of conflict of interest has precluded exercise of that responsibility.

In the case of Pyramid Lake, for example, the North Paiutes were forced to hire counsel which had to be approved by the Government—to independently sue their trustee, the Federal Government, because the Justice Department failed to present their case adequately. In short, the Federal Government has reneged in its fiduciary relationship with the Indians by not protecting their rights and the Indians continue to go unrepresented or underrepresented when their rights are being adjudicated.

The administration is certainly aware of the seriousness of the problem. President Nixon has said that the credibility of the Federal Government is damaged by those obvious institutional conflicts. Secretary Morton on several recent occasions has openly admitted that, in the past, rights of Indians to natural resources have not been protected.

But the trust counsel authority still has not been established and only initial steps have been taken to organize the interim body of independent advocacy—the Water Rights Office, which Secretary Morton indicated would see to it that Indians receive their "fair share" of water.

I have been watching the developments of that office to see whether that "fair share" will become a reality or simply another empty promise. In addition, I am anxious to see whether there is any basis for Indian skepticism in that the 2 million dollars earmarked for the office will be, in fact, "robbing Peter to pay Paul."

I would like to see, for example, how the Washoe project will provide the North Paiutes at Pyramid Lake with—and I quote the Secretary—their "fair share" of water. Perhaps we should explore what constitutes that share.

Further, in the case of the Colorado River, will the Mojaves ultimately receive enough water? Will they be consulted as to how much, indeed, is enough?

The Mojaves, the Yumas, the Chemahuevis, the Missions, the North Paiutes are all suffering because in many cases the surplus water being used for reclamation projects is, in fact, Indian water. In this respect, I believe an immediate need exists for a comprehensive water inventory to determine what water is left for the Indian and how it can be best protected. The importance of this is clear since, in many cases, non-Indians are benefiting from Indian water.

Litigation is an expensive proposition—especially in the case of water rights—which requires highly specialized skills—and the Indians are probably among the least able to meet those costs. So as it stands now, the basic conflicts between

Justice and Interior continue to result directly in the denigration of Indian rights. Their sovereignty continues to be impinged upon, and their immunity from State jurisdiction is impaired by the Eagle River decision. So in many respects—even after the President's support—and for all the expressions of meaningful change in attitude and action toward the Indian and his rights, I cannot see that the problem has significantly improved. Frankly, in some ways, I believe it has deteriorated.

As I have stated before, I strongly believe that the following changes ought to be adopted by the Federal Government:

(1) The Federal Government should exercise its full power to protect Indian rights and interests, pursuant to its constitutional trust responsibility.

(2) The Secretary of the Interior and the Attorney General must immediately take corrective action in accordance with their responsibilities to preserve, protect, determine and properly administer those Indian lands and rights to the use of water.

(3) It is imperative that the American Indians be given full and complete information and afforded an opportunity to be heard respecting any decisions, policies, rules, regulations or adjudications, administrative or judicial of the Interior Department, the courts, or any agency of government affecting the Indians or any of their land and rights to the use of water or in which they claim any interest.

(4) It is likewise imperative that the American Indians be given full, complete and timely notice before any action or decision be taken.

(5) Institutional conflicts of interest within the Interior and Justice Departments have effectively denied the American Indians representation through competent and independent counsel. To the end that the grave violation of the constitutional rights of the American Indians be immediately corrected, the United States should, until that corrective action is taken, finance and provide adequate, competent and independent counsel in all matters including but not limited to administrative and judicial proceedings.

In all events, I believe the Congress should act quickly, and should receive full support of the administration to enact S. 2035 and establish the Indian Trust Counsel Authority.

(6) In every proceeding, administrative or judicial, in which American Indians are being represented by counsel or otherwise, that representation must be under the direction of the American Indians and with full cooperation from Federal authorities being required to fulfill the Nation's trust obligation without reservation and with the highest degree of diligence and skill.

In conclusion, I believe the question is really a simple one . . . is the Federal Government willing to accept ultimate responsibility for the preservation of a culture—unique in structure and implications—or will it attempt to subtly but diligently encourage assimilation which would ultimately destroy any possibility of peaceful coexistence between the Indian and his trustee?

Senator KENNEDY. We want to welcome to the hearing Assistant Secretary of the Interior Harrison Loesch, Solicitor of the Interior, Mr. Mitchell Melich, and Mr. Walter Kiechel, who is Deputy Assistant Attorney General at the Justice Department, standing in today for Mr. Kashiwa. We appreciate very much your presence here. I know you have statements.

Mr. Loesch, Assistant Secretary of the Interior.

Mr. LOESCH. Thank you, Mr. Chairman.

Senator KENNEDY. Glad to welcome you.

STATEMENT OF HON. HARRISON LOESCH, ASSISTANT SECRETARY OF THE INTERIOR FOR PUBLIC LAND MANAGEMENT, ACCOMPANIED BL MITCHELL MELICH, SOLICITOR, DEPARTMENT OF THE INTERIOR

Mr. LOESCH. I am grateful for this opportunity to appear before you. We would like to discuss the record of Government trusteeship over Indian resources. We want to tell you where we are and where we think we are going and to clear up, at least to some extent, the vast areas of some misinformation and some misunderstanding. Today, as always, the Bureau of Indian Affairs and the Department of the Interior are strongly criticized for their failures in the field of Indian affairs, but at the beginning of this statement I wish to give you a brief view of the current situation compared to the past.

You are well aware the Nixon administration had had a commitment to a change of direction in Indian affairs from its earliest days. During the 1968 campaign President Nixon outlined his philosophy and goals in this area. His directions have been followed by substantial employment of Indians in high Bureau posts; by administration support of the Blue Lake bill; by his Indian message to the Congress of July 8, 1970; by the far-reaching package of proposed Indian legislation which followed it; by supporting donation of federally owned lands within reservations to the tribes; and by support of the monumental Alaskan Native claims proposals. The administration's credentials, as compared to either promises or performance by any past administration, are outstanding. We are, however, lacking supportive action by the Congress.

To give you a brief résumé of what we have actually accomplished, first, in the 3 years from 1969 to 1972, direct appropriations for the Bureau of Indian Affairs increased by $159 million. Over the 6 preceding years the comparable increase was only $46 million.

The average annual appropriation in the 3 years represents a 44-percent increase over the preceding 3 years.

If you apply this same comparison to the other Interior Department bureaus, the Bureau of Indian Affairs has fared better than any, both in terms of amount and percentage of increase. The chart shows the dramatic upturn beginning in 1970, but even before that the BIA was gradually gaining as compared to the other significant and competing bureaus.

Of course, money means nothing unless it provides commensurat improvements.

For illustration in this regard, in our scholastic program alone we went in these years from $2.9 million to $15.1. Our Indian scholarship holders in institutions of higher learning went from 3,300 to 9,000 and the funding per scholarship nearly doubled from $880 to $1,680.

There are similar, if not quite so dramatic, increases in all the other human services.

The burning issue here today, however, concerns not the people programs but the protection of Indian resources. This protection is a function of the Federal trusteeship responsibility. The term itself is frequently misunderstood, although I am sure not by this committee. Of course, it applied to resources, not to persons, and, while often compared to the duties and responsibilities of a private trustee, the analogy is not exact.

PRIORITY OF WATER RIGHTS INVENTORIES

Senator KENNEDY. Just before we get into the development of that point, while we are talking about the budgetary figures, I have seen numerous requests by the various tribes that their water resources be inventoried and developed; here you mention the total incresses of $100-odd million.

One of the prime considerations of Indian tribes is inventory of their water rights, so that there would be a possibility for the adequate protection of those rights.

(A sampling of tribal resolutions requesting water rights inventories follows:)

COEUR D'ALENE RESOLUTION

Whereas, the Coeur d'Alene Reservation boundaries include within them a large section of Coeur d'Alene Lake and many streams and other water bodies, and

Whereas, existing irrigation pumps demonstrate the potential of reservation land for pump, sprinkler irrigation from ground waters, and

Whereas, under the Winters Doctrine the tribe retained all of the waters that bound, traverse or underlay the reservation for the beneficial use of all of the Indian lands in the reservation and as a result have superior, prior, aboriginal and immemorial rights to the use of said waters insofar as they can be used beneficially in the domestic, agricultural, industrial, recreational and esthetic development of the reservation, and

Whereas, said Winters Doctrine guarantees not only the quantity of water that can be beneficially used but also the quality of the water, it being clear that pollution of these waters is an even more serious violation of the tribal rights than their diversion, and

Whereas, as is the case of other tribes, non-Indians are threatening to preempt, pollute and effectively exhaust the potential of the tribe's water resources, and

Whereas, these rights protected, as aforesaid, by the Winters Doctrine, can nevertheless be eroded or lost by failure of the tribe fully to inventory its water resources and develop a plan for their use, now, therefore,

Be it resolved:

That the Department of the Interior is hereby requested to inventory completely all of the water resources belonging to the tribe within the reservation and that said inventory map, list and describe every water resource that is available whether stream, lake or ground water, and

That said inventory also list in as much detail as possible the various *Indian lands* within the reservation that can benefit from irrigation and further list other potential uses of said waters in such things as industrial and recreational developments, and

That said inventory include the inter-relationship of reservation waters to off-reservation waters flowing into or from the reservation and the possible non-Indian uses of those waters that might threaten the Coeur d'Alene rights to the same waters, and

That said inventory include a listing of all water permits, certificates or licenses issued by the Idaho State Department of Reclamation or any other Agency for use of waters anywhere within the Coeur d'Alene Reservation or on bodies of surface, stream or ground waters outside the reservation, the depletion or use of which affect the quantity or quality of water within the reservation, and

That the Department of the Interior, through its various agencies and particularly the Indian Bureau, take all possible steps to protect and develop the water resources of the Coeur d'Alene Reservation.

Be it further resolved:

That the Tribe does hereby declare that, along with its lands, the ground and surface waters of the Reservation constitute its prime resource, and it hereby appropriates all of said waters for bemeficial uses on tribal and other Indian lands within the reservation, and

That the Tribe prepare a comprehensive, long range plan for the development and use by the tribe of all of its water resources.

COLVILLE RESOLUTION

Whereas, Indian water rights are protected under Federal Law and the doctrine of the Winters Decision; and

Whereas, The Constitution of the State of Washington disclaims all interest in trust or restricted Indian lands within the State; and

Whereas, legal advice indicates that the rights to use of water within the boundary of the Colville Indian Reservation was never open to appropriation under State law; and

Whereas, legal advice further indicates that the State of Washington has no jurisdiction over the rights to use of water within the Colville Reservation; and

Whereas, the State of Washington has assumed jurisdiction over the rights to use of water within the Colville Reservation by issuing water permits to non-Indian landowners within the reservation; and

Whereas, it is reasonable to assume that the matter of jurisdiction over the rights to use of water within the Colville Reservation shall of necessity be settled in court; now

Therefore, be it resolved that the Bureau of Indian Affairs be requested to conduct a Water Resource Inventory for the Colville Reservation.

FORT HALL RESOLUTION

Whereas, the Shoshone-Bannock Tribes, Fort Hall Reservation, Fort Hall, Idaho possess an extensive land base reservation, the principal business and natural resource consisting of fertile agricultural land, and

Whereas, extensive waters are appurtenant to the subject reservation consisting principally of the Blackfoot River, Snake River, Portneuf River, American Falls Reservoir, and Chesterfield Reservoir, together with all subterranean waters appurtenant to the subject property, and

Whereas, the Shoshone-Bannock Tribes under treaty law, and under the laws and statutes of the United States Government, and the decisions of the Supreme Court of the United States of America, assert that they are the paramount owners of any and all surface and/or subterranean waters appurtenant to the said reserved lands, to the full extent reasonably necessary for the full development of the subject lands, together with culinary and industrial uses, both present and as may be reasonably protected for the next ten-year period, and

Whereas, water needs in the State of Idaho adjacent to the reservation, together with water needs on the reservation, have been developed to that level where priorities must be established, for the preservation of the respective rights, if such paramount rights are to be retained and enjoyed by the Indian people, and

Whereas, it is necessary that certain legal notices and legal action be effected, together with extensive studies of a technical nature, determining water needs, water inventories, and water sources, and the tribe is desirous of effecting said steps to preserve the maximum rights available to the Indian people,

Now, therefore, be it resolved by the Business Council of the Shoshone-Bannock Tribes, Fort Hall, Idaho, that the Tribal Attorney be, and he is hereby authorized to initiate any and all action that may be legally desirable and necessary for the full establishment, creation, development and preservation of the maximum quantities of water reasonably necessary to the Tribe, and that the assistance of any and all experts, technical assistance, research and costs are hereby approved and afforded, and petition is hereby made to solicit the assistance of any and all governmental and public agencies, including the Bureau of Indian Affairs and the Department of Interior, together with the Bureau of Reclamation to assist in effectuating the purposes, intents and objects hereinabove stated.

Authority for the foregoing resolution is found in the Indian Reorganization Act of June 18, 1934 (48 Stat. 984) as amended and under Article VI, Section 1(f) of the Constitution and Bylaws of the Shoshone-Bannock Tribes of the Fort Hall Reservation, Idaho.

Dated this 6th day of January, 1970.

FORT PECK RESOLUTION

Whereas; the Fort Peck Tribal Executive Board is the duly elected body representing the Assiniboine and Sioux Tribes of the Fort Peck Reservation and is empowered to act in behalf of the Tribes. All actions shall be adherent to provisions set forth in the 1960 Constitution and By-Laws and Public Law No. 449, and

Whereas; The Tribes are concerned about their water rights within the boundaries of the reservation,

Therefore, Be it Resolved; that we hereby request the Bureau of Indian Affairs to provide the Tribes with an inventory of water rights for Fort Peck Reservation.

Approved:

(S) JOSEPH W. CULBERTSON,
Vice Chairman, Fort Peck Tribal Executive Board.

__________,
Superintendent, Fort Peck Agency.

JICARILLA APACHE RESOLUTION

(By telephone from Mr. Tom Olson's office)

Whereas the American Indian Historical Society through Mr. Rupert Costo has expressed an interest in assisting the Jicarilla Apache Tribe in making an inventory of its water uses from the Navajo River as the same crosses the Jicarilla Apache Reservation and

Whereas the Jicarilla Apache Tribe is most interested in completing such an inventory at the earliest possible date so as to assist the Tribe in presenting its claims to water uses from the said stream and

Whereas the Jicarilla Apache Tribe is most appreciative of the interest expressed by the American Indian Historical Society and wishes to encourage the efforts by said Society in performing these worthwhile tasks and

Now Therefore be it Resolved by the Council of the Jicarilla Apache Tribe and it hereby expresses its appreciation to the American Historical Society and to Mr. and Mrs. Rupert Costo of that organization for its offer of assistance to the Tribe in making an inventory of its water uses both present and future from the water of the Navajo River as the same crosses the Jicarilla Apache Reservation and cordially invites the American Historical Society and its members and officers and agents to the Reservation to make such investigation as it thinks necessary or desirable to complete the inventory, and

Be it Further Resolved that the Tribal Council respectfully requests that the Bureau of Indian Affairs assist the aforementioned American Indian Historical Society and its personnel through making available to it all data and information it has heretofore collected and assembled which might prove useful or helpful in completing the inventory.

RESOLUTION NO. 55 OF THE LUMMI BUSINESS COUNCIL

Whereas, the Lummi Business Council is the duly constituted governing body of the Lummi Indian Reservation by authority of the Constitution and By-Laws of the Lummi Indian Reservation as approved April 2, 1943, by the Assistant Commissioner of Indian Affairs; and,

Whereas, the conscience of the Lummi Business Council has been brought in sharp focus on the question of water quality and water level as this topic was amplified in discussions at various meetings of State, and Federal officials, Indian Organizations, and Inter-tribal Leaders, etc.; and,

Whereas, an examination of conditions of this natural resource as applied to the Nooksack River reveals an unconscionable lack of responsibility on the part of the State in the execution of use permits to take water from the Nooksack River, which has as its effect of seriously reducing the level of the river, together with another important factor of contamination from a wide range of up-river or rural areas dumping practices of long standing; that this pollution problem has adversely affected the spawning grounds and annual salmon run as well as reduced the quality of water at the mouth of the river, far below the acceptable level for the health and safety of the Indian residents at the village site; and,

Whereas, the criticalness of this water problem is basic to the quality of life on this reservation, when it is known that no community can survive without the quality and quantity of water to meet their immediate and long-term needs; that it is important to recognize that if this community does not act now to protect its inherent interest in water rights, others such as heavy industry, large communities and the general population growth in this area, will acquire virtually complete control of the water supply for which there will be no reversal; and,

Whereas, it is the belief of this Council that the decision of the U.S. Supreme Court of 1908, in the case generally referred to as the "Winter Doctrine" established a firm commital, a precedent that has been followed since, which clearly states that Indian tribes have a present perfected right to the use of waters, rivers, and streams that arise on, traverse or border their reservations.

Now Therefore be it Resolved, that it is the clear responsibility of this Council to indicate the position of the Lummi people to be in direct opposition to any take-over of our water resources, by anyone, because of the serious impact such denial of these rights would have on future generations of this community; that this type of encroachment not only attempts to further erode Treaty Rights, but also has as its overall objective the insidious destruction of our Indian Culture; and, Be it Further Resolved, that because of the serious nature of the question of water rights, it is requested that the resources of this Tribe's legal firm, Ziontz, Pirtle and Fulle, begin immediately to develop appropriate material of fact for use in possible litigation or to bring about recognition from the State, Cities and other beneficiaries of the Nooksack, that the Lummi people, indeed, do have prime water rights and are also entitled to the quality and quantity of water for the immediate and long-term needs.

Vernon A. Lane,
Chairman, Lummi Business Council.

Resolution of the Navajo Tribal Council

Nov. 19, 1971

APPLICATIONS FOR FEDERAL FUNDS FOR A WATER RESEARCH

Whereas:

1. The Navajo Tribe may have claims to substantial quantities of water from all sources on, under and adjacent to the Reservation to serve all irrigable lands of the Reservation, and
2. The Tribe should explore, develop, and utilize the untapped Navajo water resource of potentially enormous economic value as soon as possible, and
3. The substantial expenditures to explore, develop, and utilize these water resources during the next few years may prove to be a very significant investment, and
4. The time is now to make this long-delayed full scale effort in determination and preservation of Navajo water rights, and such efforts will unquestionably require significant expenditures of both time and money by a coordinated team of experts, including agronomists and engineers specializing in water diversion, control and distribution; geologists, hydrologists and other specialists in other areas of water use working in conjunction with the General Counsel to accomplish the objective.

Now Therefore be it Resolved That:

The Navajo Tribal Council hereby requests all possible financial assistance from the BIA and any other governmental agencies which might be interested and concerned with the protection and utilization of Rights to all water the Navajo Tribe is entitled to.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Tribal Council, at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 45 in favor and 0 opposed this 19th day of November, 1971.

Presiding Chairman.

Nez Perce Resolution

Whereas, the Nez Perce Tribal Executive Committee has been empowered to act for and in behalf of the Nez Perce Tribe, pursuant to the Revised Consitution and By-Laws, adopted by the General Council of the Nez Perce Tribe, on May 6, 1961 and approved by the Acting Commissioner of Indian Affairs on June 27, 1961; and

Whereas, the Nez Perce Reservation boundaries include within them or bordering them several rivers and many streams and other water bodies; and

Whereas, existing wells demonstrate the potential of reservation land for pump and sprinkler irrigation as well as domestic use and other uses from ground water; and

Whereas, under the Winters Doctrine the tribe retained all of the waters that bound, traverse or underlay the reservation for the beneficial use of all of the Indian lands in the reservation and as a result have superior, prior, aboriginal and immemorial rights to the use of said waters in so far as they can be used beneficially in the domestic, agricultural, industrial, recreational and esthetic development of the reservation; and

Whereas, said Winters Doctrine guarantees not only the quantity of water that can be beneficially used by also the quality of the water, it being clear that pollution of these waters is an even more serious violation of the tribal rights than their diversion; and

Whereas, as is the case of other tribes, non-Indians are threatening to preempt, pollute and effectively exhaust the potential of the tribe's water resources; and

Whereas, these rights protected, as foresaid, by the Winters Doctrine, can nevertheless be eroded or lost by failure of the tribe fully to inventory its water resources and develop a plan for their use, now, therefore,

Be It Resolved, that the Department of the Interior is hereby requested to inventory completely all of the water resources belonging to the tribe within or bordering the reservation and that said inventory map, list and describe every water resource that is available whether river, stream, lake, pond, or ground water; and

That said inventory also list in as much detail as possible the various Indian lands within the reservation that can benefit from irrigation and further list other potential uses of said waters in such things as industrial and recreational developments; and

That said inventory include the inter-relationship of reservation waters to off-reservation waters flowing into or from the reservation and the possible non-Indian uses of those waters that might threaten the Nez Perce rights to the same waters; and

That said inventory include a listing of all water permits, certificates or licenses issued by the Idaho State Department of Reclamation or any other Agency for use of waters anywhere within the (or bordering) Nez Perce Reservation; and

That the Department of the Interior, through its various agencies and particularly the Indian Bureau, take all possible steps to protect and develop the water resources of the Nez Perce Reservation.

Be it Further Resolved, that the Tribe does hereby declare that, along with its lands, the ground and surface waters of the Reservation constitute its prime resource, and it hereby appropriates all of said waters for beneficial uses on tribal and other Indian lands within the reservation; and

That the Tribe prepare a comprehensive, long range plan for the development and use by the tribe of all of its water resources.

Spokane Resolution

Whereas, the Spokane Tribe has long range development plans that will require the proper use of all the water resources on the reservation, and

Whereas, there is a present threat to tribal water rights by the granting of water permits by the Washington State Water Resource Department, now, therefore,

Be it resolved:

That the Bureau of Indian Affairs and the Department of the Interior are hereby requested to conduct a water resource and use inventory on the Spokane Reservation.

That in doing so, they consider the long range planning and needs of the Spokane Tribe and its Reservation lands, identify and inventory all of the water resources of the reservation, particularly in stream beds, and the lands that may be benefited by use of available water for irrigation.

Whereas, the Spokane Tribe is involved in the preparatory stage of an expected federal court adjudication of its water rights on Chamokane Creek and in its watershed, and

Whereas, it is also working with state, county and federal agencies in ascertaining the seriousness and extent of the pollution of the Spokane River and Roosevelt Lake by the City of Spokane and other polluters and the effect of said pollution on the waters of the lake and on the use and value of the tribal lake frontage and freeboard areas, and

Whereas, the Council has been advised of the possibility of its receiving through the Portland Area Office of the Bureau of Indian Affairs $14,000 from the Industrial Development account, which funds will be available to help finance some of the work necessary in the foregoing, now, therefore,

Be it resolved:

That the Spokane Tribe does hereby request the transfer by the Bureau of Indian Affairs into the Tribe's account at the Colville Indian Agency of the $14,000.

That said moneys be utilized by the Tribe in the expenses and compensation of personnel provided by or through the Indian Bureau or by other agencies or in direct compensation of qualified private individuals or firms in assisting with the Land and Water Resource Study to be carried on in connection with the Chamokane Water Rights case as well as in the aforesaid investigation concerning the pollution of the Spokane River.

RESOLUTION NO. 4541 OF THE COUNCIL OF SOUTHERN UTES

Whereas, authority is vested in the Tribal Council by the Constitution and By-Laws adopted by the Southern Ute Tribe and approved November 4, 1936, to act for the Southern Ute Tribe, and

Whereas, it is the desire of the Council of the Southern Ute Tribe to investigate the needed future water supplies for municipal, industrial and recreational use on the Southern Ute Reservation, and

Whereas, it is the desire of the Council of the Southern Ute Tribe to investigate and determine their coal resources on the Southern Ute Reservation in order that they can determine the amount of water that would be necessary to develop such a resource; in order that that future land use planning could be so designed as to not interfere with possible coal production, and in order that they can satisfactorily determine possible future income to the Southern Ute Tribe, and

Whereas, the State of Colorado has adopted the Water Rights Determination and Administration Act of 1969, which legislation provides for the tabulation of all water rights in Colorado and, generally speaking, the total Indian water rights have not been included in State Water Adjudications, and

Whereas, because of the foregoing, the Council of the Southern Ute Tribe feels it is urgent and absolutely necessary that the inventory of Tribal water supplies and coal resources be completed as soon as possible, and

Whereas, the Bureau of Indian Affairs does not have the personnel required to do said inventories, and

Whereas, it is desired that specialists and/or consultants be hired for the purpose of doing said inventories as soon as possible,

Now, Therefore be it Resolved, that the Council of the Southern Ute Tribe hereby requests the Bureau of Indian Affairs to secure funds for the purpose of hiring a consultant or specialist to compile an inventory of the Southern Ute Tribe's coal resources and necessary data on the amount of water that would be needed to develop the same, and

Be it Further Resolved, that the Council of the Southern Ute Tribe hereby requests the Bureau of Indian Affairs to secure funds for the purpose of hiring consultants to determine the future water needs of the Southern Ute Tribe for municipal, industrial and recreational supplies.

This resolution was duly adopted on the 27th day of October, 1970.

JOHN S. WILLIAMS,
Acting Chairman, Southern Ute Tribal Council.

UMATILLA RESOLUTION

Whereas, Water is a key to both land and industrial development; and

Whereas, The Tribes need to protect its water rights for future use; and

Whereas, The Confederated Tribes is financially unable to support a study of its needs and resources; Therefore, be it

Resolved, By the Board of Trustees of the Confederated Tribes of the Umatilla Indian Reservation that the Bureau of Indian Affairs furnish an inventory of Tribal water resources and detailed information on steps that should be taken to protect said water rights as soon as practicable.

WALTER P. FARROW,
Chairman, Board of Trustees.

RESOLUTION, UTE MOUNTAIN UTE TRIBAL COUNCIL

Whereas, appropriate authority is vested in the Tribal Council of the Ute Mountain Ute Indian Tribe by Article V, Section I of the Constitution adpoted by the Ute Mountain Tribe of Ute Indians and approved June 6, 1940, and amended February 6, 1950; and

Whereas, it is the desire of the Council of the Ute Mountain Ute Tribe to investigate the needed future water supplies for municipal, industrial and recreational use on the Ute Mountain Ute Reservation; and

Whereas, it is the desire of the Council of the Ute Mountain Ute Tribe to investigate and determine their coal resources on the Ute Mountain Ute Reservation in order that they can determine the amount of water that would be necessary to develop such a resource; in order that future land use planning could be so designed as to not interfere with possible coal production, and in order that they can satisfactorily determine possible future income to the Ute Mountain Ute Tribe; and

Whereas, the State of Colorado has adopted the Water Rights Determination and Administration Act of 1969, which legislation provides for the tabulation of all water rights in Colorado and generally speaking, the total Indian water rights have not been included in State Water Adjudications; and

Whereas, because of the foregoing, the Council of the Ute Mountain Tribe feels it is urgent and absolutely necessary that the inventory of Tribal water supplies and coal resources be completed as soon as possible; and

Whereas, the Bureau of Indian Affairs does not have the personnel required to do said inventories; and

Whereas, it is desired that specialist and/or consultants be hired for the purpose of doing said inventories as soon as possible;

Now, Therefore, be it resolved, that the Council of the Ute Mountain Ute Tribe hereby requests the Bureau of Indian Affairs to secure funds for the purpose of hiring a consultant or specialist to compile an inventory of the Ute Mountain Ute Tripe's coal resources and necessary data on the amount of water that would be needed to develop the same; and

Be it Further Resolved, that the Council of the Ute Mountain Ute Tribe hereby requests the Bureau of Indian Affairs to secure funds for the purpose of hiring consultants to determine the future water needs of the Ute Mountain Ute Tribe for municipal, industrial and recreational supplies.

ALBERT WING,
Chairman, Ute Mountain Ute Tribal Council.

YAKIMA RESOLUTION

Whereas, the Indian rights to the use of water on the Yakima Reservation constitute one of the most valuable, if not the most valuable, of the natural resources owned by the Tribe; and

Whereas, those rights to the use of water are a catalyst for all agricultural, industrial, recreational, municipal, domestic, power generation and other developments on our lands; and

Whereas, the ever-increasing demands for water on our reservation, including private irrigation systems, deep wells, etc., pose a threat to our rights for the use of water and result in delayed development and conflicts; and

Whereas, a study showing the legal status of water rights and the location, use and availability of water would aid the Tribe in protecting its rights and in developing its water resources; and

Whereas, the Tribe would be willing to appropriate a reasonable amount of funds to conduct a study.

Now, therefore, be it resolved by the Yakima Tribal Council, meeting in regular session at the Yakima Indian Agency, Toppenish, Washington, on this 6th day of February, 1968, a quorum being present, that the Bureau of Indian Affairs is hereby requested to prepare a study or recommendations for a study of the legal and physical status of the water resources of the Yakima Reservation.

Done and dated on this 6th day of February, 1968 at the Yakima Indian Agency, Toppenish, Washington by the Yakima Tribal Council by a vote of 11 for and none against.

ROBERT B. JIM,
Chairman, Yakima Tribal Council.

RESOLUTION OF THE NORTHWEST INDIAN WATER RESOURCE COMMISSION

Whereas, Indian Tribes and their reservations have similar, common problems in the protection of their water rights, and

Whereas, the protection of tribal Indian water rights is as important as the protection and safeguarding of their land rights and is in fact the protection of the "blood stream" of the land itself without which the land has only a fraction of its true value, and

Whereas, to cast on individual Indians and their tribes the entire financial and economic burden of the protection of their water rights would be an unjust avoidance by the United States Government of its responsibilities to Indian tribes and of its fundamental obligations as the trustee and protector of Indian land rights, now, therefore.

Be it Resolved:

1. We hereby request the Department of the Interior and the Bureau of Indian Affairs to inventory systematically and expeditiously the available ground and surface waters on our several reservations and the lands and uses for which these waters may be beneficially utilized.
2. We further request that a qualified hydrologist be made available to our several reservations to supervise and conduct these inventories and to make the various studies necessary not only to identify the waters and uses thereof to be inventoried but to make the findings as to drainage basins and the ground and surface water diversions that now exist or may exist in the future to the detriment of the tribal water rights.
3. We urge the Bureau of Indian Affairs as a whole and the Area and Superintendent's offices in particular to make their qualified staff members available to accomplish the inventories and, by working under the supervision of the qualified hydrologist, make it possible for him to complete his studies, surveys and findings within a reasonable period of time.

Adopted June 16, 1970 by the Northwest Indian Water Resource Commission, at Spokane, Washington:

OSWALD GEORGE, *Chairman.*

RESOLUTION OF THE INDIAN TRIBAL CONFERENCE

A Resolution to provide for the Bureau of Indian Affairs to assist all Indian Tribes within Arizona, New Mexico, Colorado, Utah, California, and Nevada, in making a complete inventory of present and projected water needs.

Whereas, protection and development of their lands and water rights is essential to all Indian tribes and pueblos,

Whereas, determination of the lands which may be developed for irrigation, recreation, industrial, or other water uses is urgently required as a basis for defining and perfecting Indian water rights and permitting full Indian participation in the Westwide Study of land and water uses, and

Whereas, $1.2 million is needed for fiscal 1972 to commence the work necessary for that determination with respect to tribes and pueblos within the six states of Arizona, New Mexico, Colorado, Utah, California, and Nevada, and

Now Therefore be it Resolved that the Governors and other officials of the tribes and pueblos represented at this Conference request Congress to appropriate $1.2 million for the Bureau of Indian Affairs for fiscal 1972 to initiate the needed studies of Indian lands and water rights and the present and future needs of each Indian tribe and pueblo in Arizona, New Mexico, Colorado, Utah, California, and Nevada, and

Be it Further Resolved that the Bureau of Indian Affairs be directed, as and immediate priority matter to make or assist all Indian tribes within the aforementioned six State area in making a complete inventory of present and projected water needs.

I do hereby certify that this foregoing Resolution was adopted on June 25, 1971, at Phoenix, Arizona, during the Indian Tribal Conference with Tribal Representatives from six states Arizona, New Mexico, Colorado, Utah, California, and Nevada.

ADRIAN FISHER, Sr.,
Conference Chairman.

PARTIAL LIST OF INDIANS IN ATTENDANCE AT SEMINAR ON INDIAN WATER RIGHTS, PHOENIX, ARIZ., JUNE 24 AND 25, 1971

Nicholas Yeselee—Zuni
Dora Garcia—Paiute
Eugene Johnson—Papago
Everett Burch—Southern Ute
Minerva Jenkins—Mojave
Leonard C. Burch—Southern Ute
Isadore S. Mirabal—Tewa
Joe A. Sando—Jemez
Bart Montoya—Isleta
Betty Duran—Pojoaque Pueblo
Garnett Gates—Maricopa Salt River
Syron Sebahe—Navajo
Veronica Murdock—Colorado River
Edison Evans—Pima Gila River
Fred Conetah—Ute U & O
Chris A. Baker—Southern Ute
Nathanial Russell—Yavapai Apache Camp Verde
Wilbur J. Carlyle—Akchin
Frank Olguin—Tewa
Gilbert A. Podeau—Laguna
Tom Dailey—Laguna
Sterling Mahone—Hualapai
Joe L. Pecos—Jemez
Pablo Abeita—Isleta
Ernest Mirabal—Nambe
Frank L. Ortiz—Acoma
Walter E. Voorhees—Walker River Paiute
Bill Tom—Paiute Kaibab
Leo Reano—Santo Domingo
San Antonio Coriz—Santo Domingo
Bob Hunter—Inter Tribal Council—Nevada
Reyes Quintana—All Pueblo Water Committee—Santo Domingo
Frank Tenorio—San Felipe
Edward Sanchez—San Felipe
Benny Atencio—Santo Domingo, All Pueblo
Ione Martinez—San Ildefonso
Joe Sanchez—San Ildefonso
William L. Baca—Santa Clara
Joseph E. Duran—Tewa Teseque
Clara Seota—Pima Salt River
Don Antone—Arizona Inter Tribal
Pat Patencio—Palm Springs
Larry Pierce—Palm Springs
Tony Andreas—Palm Springs
Dean Welch—Colorado River
Teddy James—Pyramid Lake
Bill Alcaida—Chemehuevi Colorado River
Bill Hanley—Navajo
Clyde Leon—Santa Ana
Porfirio Montoya—Santa Ana
Clark P. Hadley—Navajo
Ed Sandoval—Jicarilla
Andy Acoya—Laguna
Joe Fisher—Chemehuevi Colorado River
Vida Fisher—Chemehuevi Colorado River
Edwin Tafoya—Pueblo
Paul Swazo—Tesuque
Garry Poowegup—Ute U & O
Frances Stillman—Mojave Ft. Mojave
Joe A. Quintana—Chochiti
Raymond Herrara—Cochiti
Jeanette Otero—Mojave Ft. Mojave
Jerry Evanston—Mojave Ft. Mojave
Harwood Jenkins—Mojave Ft. Mojave
Henry Montague, Sr.—Quechan Ft. Yuma
Robert Russell—Yavapai Ft. McDowell
Don Calac—Mission Rincon
Matt Calac—Mission Rincon
Roger Evans—Pima Maricopa Gila River
Mary Jane Felix—Papago
Agnes Macabe—Papago
Angelo Clenz—Sandia
Elaine DeFazeo—All Pueblo
Fritz Brown—Quechan Ft. Yuma
Cato M. Sells—Navajo
Robert Barley—Cocopah
Victoria Savauni—Laguna
Peter McDonald—Navajo
Charley Vigil—Jicarilla

Senator KENNEDY. I am wondering if you would agree with me, first of all, from your own experience that this is one of the very highest priority items?

Mr. LOESCH. Yes; I think it is, Senator Kennedy. I believe that perhaps the most important question for the reservation of Indians today is the protection of their water rights.

Senator KENNEDY. Certainly, in terms of the protection of water rights, I suppose they have to know where the water is, or how much water there is, or what those legal rights are?

Mr. LOESCH. That is correct.

Senator KENNEDY. So you would agree with me, therefore, that in terms of priorities, this is one of the top priorities and it is always difficult, I know——

Mr. Loesch. In the resource area, I would say it is.

Senator Kennedy. Well, in any area in terms of Indian rights, would you not agree?

Mr. Loesch. Well—I would hate to——

Senator Kennedy. What do you think is more important? What would you put above that now in terms of what should be done rather than——

Mr. Loesch. Well, of course, it is always difficult to equate or compare a resource problem with a people problem, but I would think that both health services and education would have a high priority in Indian minds, and particularly in post-high-school education so that they will be developing their own skills for their own management of their own reservations. But I agree that—I couldn't make a comparison. I think both are very important in different areas.

Senator Kennedy. Well, I agree. Let's say that it is a top-priority item.

Mr. Loesch. Yes.

Senator Kennedy. Now, is there any reason that inventories could not be prepared other than the limitation on financial resources?

Mr. Loesch. Not at all. As a matter of fact——

Senator Kennedy. As I understand, there are adequately trained people in your Department or the adequately trained hydrologists and the like with whom you could contract this out?

Mr. Loesch. Obtainable; yes, sir.

Senator Kennedy. Could you perhaps develop this point a little bit as to what the thinking of your Department has been in terms of recognizing this as one of the top-priority items? As you point out in the early part of your statement, there was an increase of $100-odd million over previous budgets. Was any of that money devoted toward the inventorying of Indian water, or what do you think will be the activities of the Department in terms of inventory in the future?

Mr. Loesch. Well, Senator Kennedy, let me say, first, that I agree with I think we were a little slow getting off the mark in the water rights area. I don't think that we considered the danger to Indian water rights early enough. At the present, as you are aware—my statement goes into that a little later—Secretary Morton has established an Indian Water Rights Office. It is being funded by a substantial sum in this current fiscal year and it has available to it for the next fiscal year $1.75 million for the purpose of—I don't know that that is enough; I am not saying that is—but it ought to be enough to take care of the priorities, the most important things first.

Senator Kennedy. Well, what has been done this year? What is your budget figure this year in terms of inventory?

Mr. Loesch. We are obtaining $600,000.

Senator Kennedy. $600,000, and it is $1,700,000 for next year; is that right?

Mr. Loesch. Yes, sir.

Senator Kennedy. How much surveying can you do with that of the various requests? What percentage of the requests by Indian tribes can be funded with that kind of allocation of resources?

Mr. Loesch. By surveying you mean making the inventory of the particular rights involved on the different reservations? Senator, we have a proposal on how we will use the $600,000 which I don't think

I have at hand. I seem to have everything else at hand, but I would be glad to run that down for you. It gives the Water Rights Office a good start; that is all I can say for it. Don't forget, however, that the Bureau of Indian Affairs itself by the use of present personnel on the ground, on the reservations, has been and will continue to make inventories without trespassing on the water rights budget that I mentioned.

Senator KENNEDY. I suppose that water rights budget isn't only for inventory?

Mr. LOESCH. No, it isn't. It has got to take care of salaries; it has got to take care of—that is, of the salaries both of the Water Rights Office and of the people, the contracts which will be let for inventories, everything.

Senator KENNEDY. Well, how much? I mean how much really can be used toward resolving the kinds of questions that have been raised over Indian water rights? What percent of the Indian reservation water rights would be able to be inventoried with whatever percent of that money will actually be used for inventory?

Mr. LOESCH. Well, I can't give you a percent of what the total job would be; these things can't be done in 1 year or 6 months. This will furnish us the money to commence work on at least 20 projects.

Senator KENNEDY. Twenty projects?

Mr. LOESCH. At least. I think—I am thinking back to the piece of paper I am referring to; it is two pages of list with allocated amounts, and there must be at least 20, perhaps 30.

Senator KENNEDY. Could you submit that for us?

Mr. LOESCH. Yes.

(The list of water rights projects submitted by the Department of the Interior follows:)

PROJECT

Completion of Inventories on the Southern Ute and Ute Mountain Reservations in the State of Colorado—A completion of current studies and reports, collecting inventory data and the evidence of Indian water rights for filing in Water Division No. 7 litigation in the State of Colorado is immediately necessary. This is a result of the case of *United States* v. *The District Court in and for Eagle County, State of Colorado* (401 U.S. 720, 1971).

Lummi Indian Reservation in the State of Washington—Immediate expense in the preparation of witnesses and testimony to include travel and other litigation expenses in connection with the suit filed to protect the ground water rights against interference by the State of Washington and non-Indian water users.

Central Arizona Project—There is an immediate need to conduct studies and complete computer analyses to determine the extent of the water needs of the Indian reservations to be served by this project. This sum will include ground water studies in the vicinity of the Papago Reservation.

Colville Reservation in the State of Washington—Immediate initiation of studies to determine the effect of a proposed reclamation project on Indian water rights of this reservation is necessary. Survey of water supplies and needs in that area are involved.

Lac Courte Oreilles Reservation in the State of Wisconsin (Chippewa Flowage)—Hydrologic, geologic, and environmental studies are immediately necessary in connection with the intervention before the Federal Power Commission announced by the Secretary in his recent press conference.

Rincon, La Jolla, Pala, Pauma and San Pasqual on the San Luis Rey Watershed in San Diego County, California—Completion of the appraisal studies establishing the value of the use of water and Indian lands by the Escondido Mutual Water Company under FPC Project No. 176 for use in current cases seeking to relicense or suffer cancellation pursuant to the complaint of the Secretary of the Interior.

Spokane Reservation in the State of Washington—An immediate study of the irrigable acres and water uses on Chamokane Creek is necessary to present a suit to prevent pumping from that creek by non-Indian water users in violation of the Indians' rights.

Flathead Reservation in the State of Montana—Completion of current studies establishing potential land and water uses on that reservation for use by the Department of the Interior in administering the waters of the reservation pursuant to General Allotment Act of February 8, 1887 (24 Stat. 388).

Jicarilla Reservation in the State of New Mexico—To initiate studies on the inventory of land and water uses on this reservation and to determine the effect of the San Juan-Chama Reclamation Project on its water rights.

Wind River Reservation in the State of Wyoming—The completion of current studies establishing potential land and water uses on this reservation in connection with the Indians' claim to rights to water in Yellow Tail Dam and other reclamation projects.

Western Shoshone Reservation in the State of Idaho—Initiation of land and water inventory of potential uses and hydrologic and geologic studies necessary to protect the Indians' water rights against the application of Riddle Ranches, Inc., to appropriate the waters of Blue Creek under the laws of the State of Idaho. This case is at issue before the administrative officer in the State of Idaho.

Yakima Reservation in the State of Washington—Completion of ground water studies to ascertain the quantity of ground water on the Yakima Reservation and to determine whether there is encroachment on those waters by other water users.

Senator KENNEDY. If you had an adequate supply of funds, how many reservations do you think should be inventoried?

Mr. LOESCH. Well, certainly the object of the Department in the end will be to complete, with the help of the tribes, water inventories and a delineation of water rights for each reservation.

Senator KENNEDY. What do you think——

Mr. LOESCH. Some of those—excuse me.

Senator KENNEDY. What do you think that would cost, approximately?

Mr. LOESCH. It is hard to tell. Some of them are very easy, one-shot jobs that are not expensive.

Senator KENNEDY. Well, you mean there hasn't been any overall survey done at all?

Mr. LOESCH. Oh, sure, there has.

Senator KENNEDY. What do the surveys show in terms of the need?

Mr. LOESCH. I couldn't tell you.

Senator KENNEDY. Well, is there anyone here who could perhaps tell us? I mean, it seems to me that if you are about to fund some programs for 20-odd programs, I don't see how you can make an evaluation as to where the most crucial need is unless you have done a total survey for all of the reservations.

Mr. LOESCH. Well, Senator, it seems to me that we have to remember that this is effectually a new project. We have heard from a number of tribes, "We want water rights and inventories," and the whole gamut of service there. There are some tribes that have made no request at all.

Senator KENNEDY. But you are not just waiting for a tribe to ask?

Mr. LOESCH. No, that is why we are setting up the Water Rights Office and putting people in it whose first duty will be to determine what the universe is in this regard, and who will, having surveyed the field, then be able to give us a proper idea of what the whole job is.

Senator KENNEDY. What is your best approximation in money terms? Are we talking about a few million or are you talking about $100 million?

Mr. LOESCH. Oh, no; I don't think we are talking about $100-odd million—I would think. Just to give you an example, Mr. Chairman, we think that the entire job, so far as inventory, investigation, and so on, this does not include litigation, if that becomes necessary, can be done on the Wind River Reservation for $200,000 total and that project is already very well underway.

Senator KENNEDY. Well, given against the total——

Mr. LOESCH. All right, multiply that by 150, let's say, and you would have the outside figure that you would need. You would have $30 million.

Senator KENNEDY. Pardon?

Mr. LOESCH. You would have $30 million.

Senator KENNEDY. $30 million.

Well, you have got $1.7 million coming up. That $200,000 per reservation does not include overhead for personnel, or does it?

Mr. LOESCH. Yes, sir.

Senator KENNEDY. Not within the Department, does it? Just for those working on that particular project in the field?

Mr. LOESCH. That's right.

Senator KENNEDY. It does not include your overhead here in Washington, D.C.?

Mr. LOESCH. Oh, no.

Senator KENNEDY. And the $1.7 million does?

Mr. LOESCH. Yes; for the Water Rights Office itself, yes.

Senator KENNEDY. So you have got $1.7 million next year request; is that right?

Mr. LOESCH. That's right.

Senator KENNEDY. It is principally the budgetary limitation the reason why you won't request additional money for next year; is that right?

Mr. LOESCH. I suspect it is partly that, Mr. Chairman, but again I repeat that we are opening the campaign on this. You have got to find out——

Senator KENNEDY. I think you deserve credit for opening the campaign. I think what we have to try to do is measure whether it is a real opening or just tokenism.

Mr. LOESCH. We think that this money will be sufficient for us to have fully investigated the entire universe of need, and that thereupon we will be able substantively to show Budget Bureau—OMB—what we need, why we need it. At this point there just is not that information. That is the purpose, one of the major purposes, of the installation of the Water Rights Office.

Senator KENNEDY. Do the Indian people think that this is enough money?

Mr. LOESCH. Why, no; I don't suppose so. Every tribe that has made any request naturally wants its job done first.

Senator KENNEDY. Why do you think they want this job done?

Mr. LOESCH. They are afraid their water rights are going to be eroded.

Senator KENNEDY. Why do they feel that, do you think?

Mr. LOESCH. Boy, in some——

Senator KENNEDY. Hasn't that been the case?

Mr. LOESCH. In some cases it is very difficult to say because as a matter of fact they are not being eroded in some cases where the Indians believe that they are. We are willing to investigate that and make sure. But certainly, in our opinion at least, there are some cases in which the tribe's rights are not being eroded.

Senator KENNEDY. And those rights really can't be protected unless there is adequate inventorying of water resources; is that right?

Mr. LOESCH. Well, I suspect—no, you have always got to have—to know what you are looking for.

For instance, Mr. Chairman, there are undoubtedly some water rights claims by Indians—I am not prepared to say which ones at this point—there are undoubtedly some which will be found not to be valid claims. We don't know which ones those are. There are undoubtedly others which will be found to be fully valid. We don't know which ones those are.

Senator KENNEDY. I suppose that is exactly the problem, isn't it, so far as Indians are concerned?

Mr. LOESCH. Well, certainly that is why we are attacking the problem.

Senator KENNEDY. How can you know if you don't have the studies being done?

Mr. LOESCH. We can't and that is why we are making this study.

Senator KENNEDY. So, are we to gather now that there are at least some Indian water rights that are being lost today?

Mr. LOESCH. That is the claim, Senator Kennedy. I personally know of no water rights——

Senator KENNEDY. Well, you don't know.

Mr. LOESCH. At the moment.

Senator KENNEDY. I gather from this kind of exchange, unless the record is quite a bit different, that you are really not in a position to explain with any confidence that that is not happening?

Mr. LOESCH. If you will give me a specific case I can.

Senator KENNEDY. Pardon?

Mr. LOESCH. I say, if you want to refer to a specific case, perhaps I can. I am saying that, as in any opening endeavor, you do not know what the boundaries of your problems are unless you have made the inventory.

Senator KENNEDY. I think we can all agree with that.

Mr. LOESCH. That is what we are doing.

Senator KENNEDY. We can agree that the responsibility we have—all of us, including the Congress certainly—in supplying the resources, is obviously a joint responsibility to insure that these rights are not going to be further violated. I would think that you would be here saying, "Senator, if you will give us the $30-odd million then we can go on out and do that job. And if you can't and if you don't, then we are going to try to do the job with what we have."

But I gather from what you are saying, the surveys have not been done to date. And you are saying you know there are claims, some of which may be valid and some which are not, but you don't know which are which because you have not done the surveys?

Mr. LOESCH. That is correct.

Senator KENNEDY. So it seems to me the highest priority ought to be placed on this. If you get the money, if you get the, say, $35 million as you mentioned, you already have the manpower or you know how to contract for the manpower to insure that that job can be done?

Mr. LOESCH. Yes, sir, and don't construe me, Senator Kennedy, as saying that we couldn't use more money. I am certain we could, but I also think there is a logical way of going about finding out how much money we do need; and we are going to justify the amounts of money we need, both to OMB and to the appropriate Appropriations Committee.

Senator KENNEDY. I hope it will be appropriate to Indians because, with all due respect to the Office of Management and Budget and others, I imagine they are the ones who have got the greatest interest——

Mr. LOESCH. I am sure they have.

Senator KENNEDY. You see, the problem that bothers us is that you have, say, the $1.7 million request of which perhaps $1 million actually would be used, perhaps $1.2 million for the actual inventories themselves, and given against a $30 million kind of requirement review—it would take approximately 30 years to meet the full need.

Mr. LOESCH. Well, you are assuming a level appropriation for that purpose?

Senator KENNEDY. Well, what kind of assurances can you give us?

Mr. LOESCH. I can't give you any. As you know, Senator, under the usual budget cycle we can't commit beyond the current year.

Senator KENNEDY. What would you do? What kind of goal would you set? What is a reasonable goal?

Mr. LOESCH. Well——

Senator KENNEDY. A target; we all have to have targets in meeting our responsibilities.

Mr. LOESCH. My feeling—my personal opinion is that we should have the parameters of the problem on each reservation all known, and all support for any necessary litigation or whatever further action is required based on actual knowledge of what the water rights are, within 5 years.

Senator KENNEDY. Within 5 years?

Mr. LOESCH. That is the way I would like to see it done. I don't think we gain anything by a crash program, trying to do it in a couple or 3 years. Some of these jobs are going to be big, complicated, and are going to have all kinds of administrative as well as legal questions involved.

Senator KENNEDY. You balance against that that it took us 10 years to get the man on the moon. It is going to take us 5 years to survey Indian water rights? I don't know why it is asking for such a monumental job to do the job in 2 or 3 years. We are not talking about manpower problems. As I understand there are sufficient hydrologists——

Mr. LOESCH. I would think we could obtain them if it were necessary to go all out.

Senator KENNEDY. It doesn't require a technical breakthrough that is needed. It just seems to me what we are talking about are financial resources; do you not agree with me?

Mr. LOESCH. I agree.

Senator KENNEDY. Pardon?

Mr. LOESCH. I agree.

Senator Kennedy. Now, just a little more and then I will let you continue. As we are talking about water resources, and inventory in terms of water resources, would you not agree with me that another high-priority item would be land surveys of various reservations? Do you think this is a——

Mr. Loesch. I don't think that is anywhere near as big a priority as the water, myself. There are comparatively few land surveys that are crucial at this point.

There are various disputes about where the boundary of a reservation is, but in almost all of those disputes the Federal Government owns the land outside the disputed boundary or adjacent to the disputed boundary, and there is a heavy commitment, both in the Department of the Interior and elsewhere in the Government, that that land will not be disposed of until other—until the disputes are settled. So I don't look on the land boundary questions as having anything like the same priority as the water.

I might add here, Senator, that I thoroughly disagreed with one of the statements you made in your opening statement, and that is that the land base is continuing to erode. The figures show that there is more land and there has continually been more land in Indian ownership, trust ownership, since the year 1965 and that it has gone up just about every year since then. Anyway, it is higher now than it was then by quite a bit.

Senator Kennedy. That is, as I understand it, through congressional action to return lands; is that right?

Mr. Loesch. Not altogether, no; it has been by congressional action which the administration has supported entirely.

Senator Kennedy. Sure.

Mr. Loesch. It has always been by tribal purchase of private lands, too, financed to a large degree by either grant or loan programs of the Federal Government; and there are several more of that nature on the drawing board.

Senator Kennedy. Let me ask you, have you done land surveys now? Is this a part of your budget? Do you have a budget item?

Mr. Loesch. Yes; it is a continuing job. It has been going on for many years and will continue to go on for probably quite a long time. We are faced with a monumental surveying task in Alaska if and when the Alaskan Native claims bill passes the Congress.

Senator Kennedy. Just, finally, in this area and then we will move on with your testimony—are the Indian tribes going to be involved in the development of the BIA budget?

Mr. Loesch. Yes, indeed; they are being involved.

Senator Kennedy. Have they been involved in the past?

Mr. Loesch. I don't think so, Senator; it is my impression——

Senator Kennedy. You are trying to include them in development of the budget?

Mr. Loesch. Yes, we are. I have had a little experience in that in connection with trying to involve the Micronesians in their budget situation, and it seems to me it is the same thing. We are going to have a hard time trying to fit essentially two processes into one time frame but we are making the effort and next year I think we will make an earlier or better effort than we have made today.

Senator KENNEDY. As I understand now, the budgets are being made up, are they not, for next year?

Mr. LOESCH. Yes, sir.

Senator KENNEDY. Are the Indian tribes now involved at the present time with the Government?

Mr. LOESCH. Yes, they are.

Senator KENNEDY. They are. How are they selected, the ones who are consulted in terms of this consultation?

Mr. LOESCH. My information is perhaps a little bit sketchy on that, Senator Kennedy, but our area directors have been instructed to—and not too long ago, either, not perhaps as long ago as it should have been—to get out on the ground and go over the estimates with their tribes in their area.

Senator KENNEDY. So you mean it is done out in the field? It isn't done—they are not consulted here in Washington?

Mr. LOESCH. No; they are not consulted generally from headquarters. Actually, the structure of the Bureau would make that a fairly difficult task in spite of the idea that the Bureau is fat; we have got less than 300 people including secretarial help in the Bureau and headquarters in Washington and they have lots of duties.

Senator KENNEDY. So I understand these meetings are taking place out in the field, are they?

Mr. LOESCH. Yes, sir.

Senator KENNEDY. Is notice published anyplace? I mean, do they say there is a meeting, for example, down at Flat Rock?

Mr. LOESCH. No.

Senator KENNEDY. Is there any kind of notification to those who are interested in expressing their views, any kind of open or public meeting where the representatives of the Department would listen to those who would like to make some comment?

Mr. LOESCH. I think, Senator Kennedy, that the primary contact is by the Bureau representative with the tribal chairman and the tribal council in each case. Now, there are really two steps on this. Early in the first development of a year-after-next budget, for example, the tribes are requested to set their priorities as to what they want, the thrust to be in the budget for their reservation. Those submissions are made through the superintendents to the BIA directors, synthesized as to their importance to area, and sent in to Washington, where the entire budget is looked at.

Senator KENNEDY. Where it is made up, really, isn't it?

Mr. LOESCH. What?

Senator KENNEDY. Where it is made up, really?

Mr. LOESCH. Yes; it has to be, I suppose.

Senator KENNEDY. That is why I asked if they were included in the Washington markup. I think all of us are realistic enough to know where the ultimate budgets are made up, and they are not made up out in the field.

Mr. LOESCH. That is very true and then, of course, as in the area——

Senator KENNEDY. That is what we are interested in because, as you understand, when all of those things are laid out on that table finally, and all the people determine what is going where, the issue is whether there is any Indian representation at that kind of meeting?

Mr. LOESCH. The budget, of course, has line items for particular programs; there is a line item for education, for instance, with a bunch of subheads under it. Now, that education budget is made up from a base of desires by the tribes in discussing with the agency people.

Now, as always, everywhere in the Government, those submissions come in way, way above what can be furnished and in the Department, first in the Bureau, then in the Department, and later perhaps in OMB, those have to be synthesized and adjusted to a level that suits the President's budget.

Senator KENNEDY. Well, tell me, based upon these contacts they have had at the local level, with the tribal council, what are you finding out from them?

Mr. LOESCH. Well, I am finding out——

Senator KENNEDY. How does the budget this year really differ from previous years in reflecting Indian priorities?

Mr. LOESCH. Well, in the resource field it does not show enough movement, Senator Kennedy.

Senator KENNEDY. Doesn't what?

Mr. LOESCH. It doesn't show enough movement in the resource field.

Senator KENNEDY. What do you mean by that?

Mr. LOESCH. I mean by that it is my impression and, of course, I am somewhat removed from the field, so I can't always be sure that the feel I get is the true feeling of the tribes, but it is my impression——

Senator KENNEDY. I suppose this is what the tribes wonder?

Mr. LOESCH. Sure.

Senator KENNEDY. When you have those meetings out in the field, and the final markups here on their budget, and when you have people making final, ultimate decisions——

Mr. LOESCH. Sure.

Senator KENNEDY. And the feeling, as I was getting back to before, that the Indians were really participating in that final markup session?

Mr. LOESCH. Well, they are not participating in the final markup session any more than the States participate in the final markup sessions which have distinct bearings on their budgets. But I do believe that, generally speaking, the thrust of the budget is responsive to general Indian opinion, if you can make a generalization that there is general Indian opinion, except in one area and that one area I do think we have been somewhat neglectful of—the resource field; and next year I hope to do something about that.

Senator KENNEDY. How has Indian input altered or changed your own thinking in terms of their sense of priorities? What have you really learned? What are you going to add to this year and reduce next year, given, you know, your overall kind of realistic budget limitations? I mean, if we are willing to accept that, and I think we are all realistic, you know, about how that thing is finally decided—we have so much money; we are going to divide it and we have ongoing programs and all the rest. I am interested in what the Indian input has been and how their sense of priority has been reflected and how you change your budget accordingly.

Mr. LOESCH. I can give you several illustrations on that. I think it was almost entirely Indian requests and feelings that caused us to try to strike a much better balance between the employment assistance program, especially the adult vocational training and the scholarship program which I adverted to in my statement. I think the Indian young people and the Indian tribal officials felt that the Indian kids were not getting a square—a true choice in whether to go into vocational training or higher education, and as a direct result of that we strongly raised the higher education.

Senator KENNEDY. That is a final 5-minute vote; we will recess for 10 minutes.

(Recess.)

Senator KENNEDY. The subcommittee will come to order.

Thank you, gentlemen, for your patience. We have another half hour and then we will have another vote, but we will proceed.

I want to continue moving on your testimony and ask again how the input given to you in the field in the development of the budget for next year has been reflected, whether there have been any noticeable changes in the direction of the budget and what those changes have been.

Mr. LOESCH. Yes, Senator.

Senator KENNEDY. You mentioned the education; you covered that to some extent.

Mr. LOESCH. I think that the thrust for the road program that we are presently trying to get off the ground, a greatly expanded road program primarily came from the Indian community.

I should point out, of course, that the reflection of Indian ideas in the field comes to me primarily from the officials in the Bureau of Indian Affairs and, of course, at this point in time most of those top officials are Indians and do have close contact both with tribes and other Indian communities. So I think that on the whole—now, you could also find an exception, I am sure, but on the whole I think the budget reflects the general thrust of Indian requests, not at the level they want, and in perhaps an area or two, and I do advert again to the resource area, not as well as I would like to see it; but beyond that I think it is a pretty fair reflection of what they think are their priorities.

Senator KENNEDY. What is the road program costing, approximately, the increases?

Mr. LOESCH. At the present time the road program is a $30 million per year effort.

Senator KENNEDY. Would that be increased next year as the result of the Indian input?

Mr. LOESCH. We are very hopeful it will. As you know, the budget is being formulated and I am not able to promise, but it looks very—it does look promising.

Senator KENNEDY. And that will be increased by some amount?

Mr. LOESCH. The Secretary proposed a $106 million program on a 5-year basis—$106 million a year.

Senator KENNEDY. In addition is this?

Mr. LOESCH. No.

Senator KENNEDY. If you have $30 million now, you have $106 million over 5 years—that is a reduction, if my math is correct?

Mr. LOESCH. No, sir; $106 million a year, I say, for 5 years.

Senator KENNEDY. Good. So you go from $30 to $106 million a year?

Mr. LOESCH. Well, that was the proposal that the Secretary made and that proposal came to him directly from the Bureau people, and it came to the Bureau people at the request of the tribes.

Now, what the final shakeout will be, I couldn't tell you.

Senator KENNEDY. Yes, but that is a very sizable increase?

Mr. LOESCH. Yes, sir.

Senator KENNEDY. Going from $30 to $106 million for 5 years. I mean, it is over a half billion dollars for roads and what we were talking about earlier were approximately $30 million for a complete survey of Indian water resources; but your feeling is, at least to date, that the Indians would rather have the $500 million for roads than, say, $470 million in roads and $30 million in resources?

Mr. LOESCH. No, I couldn't say that at all, Senator.

Senator KENNEDY. Would you propose that to the Indians to find out what they might think about that?

Mr. LOESCH. Well, I think the Indians want——

Senator KENNEDY. Is that the kind of input you are sort of looking for?

Mr. LOESCH. No; I think I know already what the Indians want. I think the Indians want as rapid a survey, as you call it, of their water rights and a determination of what their water rights are and what the reservation potentials and capabilities are as they can get, and that is what we intend to give them. But you have got to start somewhere, and until you know what the universe is, you just can't charge in, I don't think, with the full program at once. You recognize that to speak of an inventory doesn't mean just to figure out how many second feet of water you have got. It means what your soil moisture situation is, what recreation possibilities there are, what industrial and municipal possibilities there are, the whole gamut of things; and it may take in a sizable reservation——

Senator KENNEDY. Municipal possibilities?

Mr. LOESCH. A real effort.

Senator KENNEDY. Municipal possibilities?

Mr. LOESCH. Yes, sir; some of our tribes; for example, the Crow Tribe that you were talking about in your statement on Yellowtail; the Crow Tribe is a concessionaire of the Park Service for the operation of the recreation area and they need a sizable amount of municipal water for that effort.

Senator KENNEDY. Well, the only point is I think it is useful to have what you believe the Indians want. I thought our whole movement is to try to have the Indians——

Mr. LOESCH. This is what the Indians are asking for, just what I have said.

Senator KENNEDY. I am just wondering—if the question was put to the Indians now, you say they have indicated a strong support for a road program? You are going to do the best you can to get $106 million for 5 years which comes to about $500 million? You indicated earlier that you thought you could have a comprehensive water resource survey that approximately costs $30 million——

Mr. LOESCH. Water rights.

Senator KENNEDY. Water resource program, and I suppose it is important to do other resource programs as well?

Mr. LOESCH. Yes, it is.

Senator KENNEDY. That's right. OK. But the real limitation, as I understand earlier from your response, is adequate resources; it probably isn't insufficient personnel to do that in a relatively short period of time; you would be able to contract that out. I am just wondering—can you go to the Indian groups and say, "You have a choice; we have got—we are realistically operating within this kind of budget figure—would you rather have $500 million over the next 5 years in terms of roads, or $470 million for roads, $30 million for a survey of water?"

Do you get any kind of input?

Mr. LOESCH. Yes.

Senator KENNEDY. How do you think the Indians would vote on that kind of issue?

Mr. LOESCH. If it were a straight-out choice, get—and let me say, Senator, too, that that $30 million figure is a horseback estimate of mine just based on what little I know. I think it can be double that, or half that.

Senator KENNEDY. You don't really think it will be half that, do you?

Mr. LOESCH. No.

Senator KENNEDY. Isn't it chances are that it would be better to double it?

Mr. LOESCH. Yes, certainly; counting the Alaska situation. Yes.

Senator KENNEDY. Let's take $420 million for roads, just to put a safe cushion in there. You say to the Indians, "You can have $420 million for roads in the next 5 years and $70 to $80 million in terms of water resources." How do you think they would vote?

Mr. LOESCH. I don't know.

Senator KENNEDY. Do you think it would be worth while finding out?

Mr. LOESCH. Of course, what I hope is that we will get both.

Senator KENNEDY. Wouldn't it be wonderful?

Mr. LOESCH. Sure, and I don't think that is beyond the bounds of possibility. As soon as we know what we are after or what we need.

Senator KENNEDY. That is encouraging.

Mr. LOESCH. And are supported. I think the department will support a much expanded water resource——

Senator KENNEDY. Good.

Mr. LOESCH (continuing). Inventory program, and that is what I was saying a while ago. I think 5 years is a realistic time to complete a water resource inventory on every reservation.

Senator KENNEDY. What would, given everything going your way in 1972, be your estimate of what it would be in 1974? Can you give us any kind of feel on that?

Mr. LOESCH. Senator, I don't know.

Senator KENNEDY. OK.

Mr. LOESCH. And, of course, I am not authorized to say what the budget might be in 1974; I would say that it would depend on the Water Rights Office's determination of what can most efficiently and quickly be done.

Senator KENNEDY. Well, you see, the problem I have got, you give us the road budget for the next 5 years.

Mr. LOESCH. No, I don't, Senator. I said this was a proposal.

Senator KENNEDY. Well, give me a proposal in terms of water?

Mr. LOESCH. All right. Let's suppose that our——

Senator KENNEDY. Don't have any reluctance.

Mr. LOESCH. Let's suppose $30 million is realistic, which I don't know at this point, then I would say, commencing in 1974, we would come forward with a complete program for 4 years, and it would cover the $30 million probably.

Senator KENNEDY. Let me ask, just on the mineral resources, do you think it is worth while doing an inventory on other mineral resources of the various reservations?

Mr. LOESCH. No, I don't, at least not——

Senator KENNEDY. Do the Indians—do they feel that way, too?

Mr. LOESCH. I don't think that—I haven't learned any demand now.

Senator KENNEDY. Have you aked them? Do you ask them questions like that?

Mr. LOESCH. Sure we do.

Senator KENNEDY. What kind of reaction are you getting now? What do your field reports show in terms of this?

Mr. LOESCH. I couldn't say. I haven't talked personally to a number of tribes which have mineral resources and are getting them developed and they are under no—they have given us no pressure that I know of to do anything that we have not done. We are getting counterpressures, as usual. For example, the Navajos were much interested, along with at least a majority of the Hopi Tribe, in having their coal developed. They are getting it developed, and now we are getting counterpressures on account of the environmental situation. This is also going to happen to us down on the Papago with their large copper deposit and so on. But we don't know any pressure that I am aware of for a comprehensive mineral survey.

CONSULTATION WITH TRIBES ON BUDGET

Senator KENNEDY. In section 476 of title 25, United States Code, it specifies, and I quote:

"The Secretary of the Interior shall advise such tribe or its tribal council"—referring to the organized tribes—"of all appropriation estimates on Federal projects for the benefit of the tribe prior to the submission of such estimates to the Bureau of the Budget and the Congress."

Mr. LOESCH. Yes, sir.

Senator KENNEDY. What are you doing to implement that provision?

Mr. LOESCH. That is what I was speaking to a moment ago, Senator.

Senator KENNEDY. All right. You are familiar with that directive?

Mr. LOESCH. Yes, I am.

Senator KENNEDY. And you made every effort to try to do that over the period?

Mr. LOESCH. No, I sure haven't. I didn't know about it until last year, quite frankly; it was never brought to my attention, but we are making an effort to do that at the present time, and we hope to make a better effort next year.

Senator KENNEDY. What sort of things are you doing in trying to do that? Could you tell us at all?

Mr. LOESCH. As I told you, the area directors were requested—now, first of all, as I say, was to get the tribes at the very beginning of the budget cycle to make their requests. That being done and the synthesis having occurred, then on the way back down our area directors have been requested to get in touch with their people on the ground, the agency representatives, be in touch with the tribal councils and tell them how we think we are going to come out. Now, we don't know how we are going to come out until after we get the official President's budget. But that is our effort.

Senator KENNEDY. But under this, "All appropriation estimates on Federal projects for the benefit of the tribe," shall be submitted to the tribes prior to submission to OMB—so, do I understand that you have now set up some kind of procedure where you get out into the field, so to speak?

Mr. LOESCH. Yes.

Senator KENNEDY. Anticipated kinds of projects, what it is going to cost—you discuss that with the tribe and get some kind of input back; is that right?

Mr. LOESCH. Yes.

Senator KENNEDY. That is working now?

Mr. LOESCH. We have not done it soon enough. That statute you have quoted says it should be done before we submit it to the Bureau of the Budget.

Senator KENNEDY. But you were not aware of it?

Mr. LOESCH. No.

Senator KENNEDY. Why do you think the BIA never told you about it?

Mr. LOESCH. Sir?

Senator KENNEDY. Why do you think the BIA never told you about it?

Mr. LOESCH. I don't know.

Senator KENNEDY. Did you ask them?

Mr. LOESCH. No; I didn't know there was such law.

Senator KENNEDY. After you found out——

Mr. LOESCH. I took immediate steps to see that the Bureau did consult with the tribes.

Senator KENNEDY. You set up some kind of procedures to do that?

Mr. LOESCH. Yes.

Senator KENNEDY. Are those regulations printed, or do you have some guidlines that you can submit?

Mr. LOESCH. There are written instructions; yes, sir.

Senator KENNEDY. Could you submit those?

Mr. LOESCH. We could furnish them for the record.

Senator KENNEDY. I think they would be very helpful, particularly to the committee.

Mr. LOESCH. Fine.

(Written guidlines relating to consultation with tribes in the budget process are contained in the following correspondence:)

U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF INDIAN AFFAIRS,
Washington, D.C., August 12, 1971.

DEAR MR. CHAIRMAN: The increased involvement of the Indian people in determining the program directions of the Bureau of Indian Affairs has been most gratifying. One of the most significant accomplishments was the guidance received from tribal leaders in the development of the FY 1973 Program Memorandum for each of the field locations. Based upon these documents, the Bureau was able to present, as never before, a program which reflected the thinking of the Indian people served by the Bureau. This was a good beginning which should be built upon this year.

I have distributed the guidelines and instructions for the development of the Bureau's FY 1974 Program Memorandum to the field installations. The Agency Superintendent will be contacting you relative to your involvement in the development of programs to meet the needs of your Tribe. This is our opportunity to incorporate your thoughts into the program plans for the Bureau.

It is our policy to provide Indian Tribes and other Indian organizations with the maximum opportunity allowed by law to become involved in the operation of BIA funded programs. "Opportunity" is a key word. We will not force or intimidate the Indian people to undertake greater involvement in program operations unless *they* choose to do so. In your contribution to the development of the Bureau's FY 1974 Programs, we would like to have you especially consider the programs in which you desire to become more involved in their actual operation and to what extent. The Superintendent will work with you so that a FY 1974 program can be developed which will more closely meet your needs. Keep in mind that you will have almost two years to prepare for changes in operation as we move toward actual FY 1974 program operations.

I have great faith in the ability of the Bureau of Indian Affairs to translate your needs and desires into programs which can solve Indian problems. I have even greater faith in the ability of Indian leaders to express their needs and desires. These abilities, along with the commitment of this administration to address itself to the problems of the Indian people, will permit us to achieve our common goal of bettering the Indian's economic and social position.

Sincerely yours,

HAROLD D. COX,
Acting Deputy Commissioner.

MEMORANDUM

U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF INDIAN AFFAIRS,
Washington, D.C., July 29, 1971.

To: All area directors and superintendents.
From: Commissioner of Indian Affairs.
Subject: Policy for developing program plans for fiscal year 1974.

Enclosed are instructions and guidelines for developing the Bureau of Indian Affairs program and financial plans for FY 1974. We are continuing our system of developing program plans for each operating unit in the Bureau. With these plans we are able to develop a Bureau-wide Program Memorandum which is based upon and considers the problems and needs of all of the Indian service population. OMB Circular No. A–11 changes the requirements for submitting program and financial plans. It requires us to be prepared to furnish information of the type formerly provided by the PM, however, and we will continue to gather this kind of information within the Bureau.

It is our policy to seek the involvement and participation of the Indian people served by the Bureau in developing program and financial plans. The development of the FY 1974 PM provides a major opportunity to achieve this involvement and participation. *I want the FY 1974 PM for each installation to reflect the thinking of Indian people served by that installation.* However, Area Directors are responsible for reviewing PM's in terms of reasonableness, feasibility and justifiability.

We must increase our efforts to inform the Indian people of the program planning and budgeting processes of the Federal Government. Participation in the processes is the best way to gain an understanding of them. Our system enables us to keep all levels informed on the status of our program plans. We are feeding back current status of FY 1972 and 1973 funding as part of our FY 1974 effort. Tribal leaders must know the status of their planning efforts if they are to become involved in the planning process.

It is our policy to provide Indian Tribes and other Indian organizations with the maximum opportunity allowed by law to become involved in the operation of BIA funding programs. "Opportunity" is a key word. We will not force or intimidate Indian people to undertake greater involvement in programs unless *they* choose to do so. Indian Tribes, in contributing to the PM's, should consider the programs in which they desire to become more involved in the actual operation and to what extent. They will have almost two years to prepare for changes in operation as we move toward FY 1974 program operations.

We are supporting S. 1573 and H.R. 2377, identical bills, which contain the President's proposal to provide for assumption of control and operation by Indians of certain programs and services provided by the Federal Government. You should *not* assume this bill to be enacted, however, in planning the FY 1974 program. Your estimation of the effects of the proposed legislation will be indicated in an exhibit in the narrative portion of the PM.

I want to encourage you to submit new ideas. This could mean new programs or significant changes in existing programs. Use the narrative part of your PM to present your ideas and the Tribes' ideas. I can assure you they will be read and considered.

Finally, let me stress the importance of the PM. We can have a meaningful program plan only if you cooperate. As line officials you are the ones who make things happen. I am counting on you to make our planning efforts a success.

JOHN O. CROW,
Deputy Commissioner.

Enclosures.

U.S DEPARTMENT OF THE INTERIOR,
BUREAU OF INDIAN AFFAIRS,
August 14, 1970.

DEAR MR. CHAIRMAN: Enclosed are the instructions I have given BIA Area Directors and Superintendents to develop programs that will begin on July 1,1972 (Fiscal Year 1973). I know that this is a long time in the future but to satisfy the the Budget Bureau, we must start soon.

Please work directly with BIA employees to make sure that their decisions are guided by your ideas.

I am glad that President Nixon's message to Congress on Indian affairs came when it did. It gives you a clear idea of the Administration's policies for Indian people.

I have instructed Superintendents to seek your help in drawing up the FY 1973 program. Superintendents have been told to coordinate these plans with you. After these plans are developed, please write me a letter giving me your frank opinion on how accurately your wishes and priorities are reflected. Please review this plan carefully and indicate how you think we can serve your needs better.

Unfortunately, BIA does not have an unlimited budget for correcting problems in Indian communities. This means you must put the most important things first when you make your wishes known to BIA Superintendents in developing the FY 1973 program. If laws limit our abilities to react to your requests, we will, with your help, identify these laws and try to change them.

Superintendents need your advice in developing the FY 1973 program.

I want you to see the BIA change from an organization which manages your affairs to a service operation designed to assist Indian people in achieving their goals. You are the only people who should make decisions as to the future of your communities. I have faith and confidence in your abilities to do so.

Sincerely yours,

LOUIS R. BRUCE, *Commissioner.*

MEMORANDUM

U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF INDIAN AFFAIRS,
August 14, 1970.

To: All area directors and superintendents.
From: Commissioner of Indian Affairs.
Subject: Fiscal year 1973 BIA program development.

Enclosed is a letter to all tribal councils regarding participation in the FY 1973 planning cycle, along with the forms and directions for developing the FY 1973 Program. These instructions were discussed in detail at a meeting of Budget and Program officers at Harpers Ferry, West Virginia, in July.

The President's message of July 8, 1970, to Congress on Indian policy expresses the general policy guidance for the FY 1973 Program. There are some specific policy points that I will add at this time for your information in developing the FY 1973 Program.

I place absolute top priority on achieving Indian participation in program development. Until Indian people participate in planning and developing Bureau budgets at the Agency level, they will not be completely aware of the scope, commitment or, in some instances, the limitations of BIA programs or other BIA activities. Without this basic knowledge, local Indian leadership will be unable to make *our* system *their* system.

The long-term goal that I seek through joint budget development is to give Indian leadership the opportunity to initiate a process of negotiating with local BIA administrators for the tribes to take over and administer a range of programs which we have traditionally administered for them. In certain instances it is likely that programs will be taken over intact; in other cases Indian people will find our existing programs unresponsive to their needs and undertake to restructure them radically. They must know the BIA system to do either.

Tribal Participation

One question the Indian people will want answered is: How do we translate their ideas into operational terms? Superintendents hold the key to success, and I have this general advice to offer before turning to specific program suggestions.

Involvement is preparation of the 1973 budget cannot be isolated from understanding the pending 1972 budget, to say nothing of the cycle we are in presently. The three are inseparable. The 1972 budget is somewhat flexible until the Congressional budget presentation next spring. Tribal participation may lead to requests for certain modifications of the 1972 budget as a logical development of work on the 1973 budget. An important role you must play in this instance is to convey some of the ficsal limitations imposed by too extensive modifications, while still making effort to be responsive to tribal requests.

We are going to keep you informed of the program as it developes from the Agency to Area Office to Washington to Congress. Agency budget plans are modified as they go through the many steps of the budget process. Major changes may result from policy directions and dollar limits set in Washington by officials above the BIA. In the past, we could not work these changes back to the Agency level until the final appropriation by Congress, but this year by using the computer we expect to notify the Agency of changes at the following *key points* of the process:

1. Agency program submission
2. Area program adjustment
3. Washington Office program
4. President's Budget
5. Appropriatiou by Congress

Tribal leaders cannot reasonably be expected to learn about budget development while isolated from an understanding of the fundamentals of Agency operation. Many Indian people with whom I have talked seem convinced that we try to keep them in the dark in this area. Here is an opportunity to prove that we keep no secrets (other than personnel records, welfare case sheets, or similar documents involving individual privacy) from the tribes we serve. As you all know, the Indian Affairs Manual no longer is in any way a restricted document. Share it with tribal leaders. Explain its use and provide copies of its contents when requested to do so.

When I ask tribal leaders to involve themselves in BIA program development, I am quite aware that I may be asking persons with limited resources to work side by side with Federal employees earning relatively large salaries. This inequity will be partially overcome by setting aside a portion of this year's increases in the Community Development/Adult Education budget to provide stipends to tribal representatives who are not already salaried tribal officials. Unfortunately, the funds will be limited and are to be used primarily to supplement lost wages and to provide transportation and lodging for those coming from some distance.

The use of AVT funds to train Indian people in the areas of program planning and budget development is under exploration. Short-term workshops and seminars, utilizing our own Bureau in-house capabilities as well as the expertise of such organizations as the National Indian Training and Research Center, also are being planned. Hopefully, each of you also will work with the leadership of the tribes you serve in developing orientation sessions into the complexities of budget development. I welcome your individual suggestions as how best to approach this important and fundamental question.

Planning, Objectives, and Goals

One cannot intelligently talk about development without relating it to meeting the long-term goals which communities must set for themselves and to the development of practical strategies for achieving these objectives. This is the embodiment of sound planning, an element which has been generally absent in the development of reservation programs to date.

What too often has passed for "reservation planning" has been the fleeting efforts of outside experts. We could fill an archive with planning documents developed in this manner. Most not only do not reflect the goals of community members, but the few which do usually have failed to forge the vital links between the planning participants—the Indian people—and the ultimate solutions to the planning problems they face. Do not encourage any more planning of this sort.

Clearly, there is a great deal of preliminary work of a generalist nature—that is, not requiring the retaining of experts—which first must be undertaken to assist a community to assemble the ideas which must precede developing a "comprehensive" plan. I expect superintendents to play key roles in this critical area by helping local leadership to rough in the parameters of a community plan and to sort out the logical alternatives for solving some of the problems uncovered in this effort.

I also expect superintendents to take the initiative in compiling lists of resources that Indian leadership can draw upon in developing and implementing comprehensive development plans. Seven of the eleven Executive Departments provide clearly earmarked services to Indians, to say nothing of scores of other programs which can be shaped to meet Indian needs. Superintendents also must become personally involved in reshaping the Agency budget so that it supports tribal development plans as they emerge.

While the general objective is to enhance the level of living for Indian people, this may be described in many ways by tribal people. One group might specify a particular change in per capita income as its goal; while another may state its desire to maintain the land base. There will be extremes in manner in which these objectives may be articulated. It is the BIA's job to make certain that local tribal objectives and priorities are defined in such a manner as to allow an assessment to be made to determine if BIA is responsive to these objectives. If our programs are not responsive, then it is BIA's task to work with local tribal people to define programs that will be responsive to tribal objectives.

Stating objectives and goals means identifying where you are and where you want to go (as a tribe). It also means identifying priorities. What will be done first, second, etc., given a limited budget? What is BIA's role in the total development concept in any Indian community? These questions assume planning. Pay particular attention to the emphasis given Master Planning in President Nixon's recent message. If no such Master Plans exist and tribes are interested, it is your responsibility to assist in initiating these efforts. Where plans have been made, are they truly tribal? Are they being implemented? What is the status of such efforts? Call on the Central Office when additional staff is required to provide planning assistance.

Staffing

I would like to turn to the subject of future staffing patterns at the Agency and the Area Office level. Do not include requests for additional Agency or Area staff in developing the 1973 PM. Special consideration will be given to requests for new staff only if superintendents are able to demonstrate clearly that this is the only way in which local program objectives can ke achieved. Your emphasis should be on diminished management by Federal employees and increased Indian direction of BIA-funded programs. I expect FY 1973 to show an overall decrease of Federal employees in favor of tribal employees.

Contracting with tribes to take over and operate existing BIA programs, or modified versions of traditional BIA programs, must be given the very highest priority. Initially this may be accomplished under the "Buy Indian" contract or through a program agreement. You must make it clear to Indian leadership that you will provide them, if requested, help to plan, direct, and administer Federal funds under a takeover program. I know that I can count on your cooperation in allaying the fear that tribes which assume more responsibility for program operation are apt to be terminated or to have the burden of program costs transferred to them. The President's message explicitly states that all tribal service contracts can include clauses which allow for retrocession of programs to BIA or to other Federal agencies. Work closely with tribal leadership and tribal legal advisors and include as much escape language as is necessary to assure Indian people that our contracting program seeks only to finally place program control where it should have been years ago—in the hands of Indian people themselves—while keeping full Federal funding and retaining the umbrella of Federal trusteeship.

Ongoing Programs

I have alluded to the need to change the direction of certain BIA programs to make them more responsive to Indian needs. I should like to elaborate a bit on this point. I am suggesting that ongoing programs be modified only if they are not responsive to meeting the widest range of local needs. This is why I am insisting that superintendents and tribal leaders evaluate programs together. Be honest with one another about those programs which serve only a small percentage of the local population made up of that segment least in need of assistance. It will take courage on the part of Indian leaders to face this issue. Superintendents will need to display similar courage in reducing top heavy management staffs and in modifying certain housekeeping functions presently confined to serving the BIA itself.

Program Recommendations

That which follows is not meant as a rigid set of objectives, but rather as guidelines for the sort of imaginative thinking I expect to see displayed in reshaping programs in the 1973 PM submission. Please be assured and in turn assure your tribal colleagues that alternate programs which carry out the intent of Administration policy and which protect the integrity of the funds appropriated to the BIA will be equally acceptable.

1. Education

The FY 1972 BIA PM calls for some organizational changes in the education program, especially moving toward the concept of line control and regionalization. These concepts will be implemented. Specific plans will be developed with the Areas and the Indian leadership to insure the successful implementation of these ideas.

There are, however, important segments that can be planned and implemented immediately at the local level, specifically the control of local schools by Indian school boards and the use of volunteer services.

In order to get the educational contracting program under way at last, I propose a program of negotiation between superintendents and Indian leadership at the community level. The Washington staff will cooperate fully in the development of individual educational contracts and provide advice and technical assistance to Agencies and tribal councils, school boards or other Indian interest groups undertaking negotiations in this area.

I want to emphasize the necessity of moving from advisory Indian school boards to control of local schools.

In certain instances when neither public nor Federal day schools are present to serve community needs, boarding schools located outside of Indian communities are the only education option which the Bureau provides. When this situation exists, encourage Indian communities to form local school boards and negotiate to retain the per student cost used to support community children in boarding schools with which to provide a base around which a community day school can be organized.

Indian communities, like most small rural communities, have among their members persons capable of performing on local school boards. The Bureau is, when necessary, fully prepared to provide such training and technical assistance in school board training and school operation as may be requested of it by Indian community education groups.

This year be certain that classroom instructors are given maximum participation in the overall design in program development. Teachers have never been given the recognition as other teachers have throughout the Nation. The yare and will be one of the most important parts of the Bureau of Indian Affairs.

The President has called for increased use of volunteer services rendered by individual private citizens in combating major social problems. I can think of no place where this type of volunteer effort can be put to better use than in schools operated by Indian school boards and public schools.

Many schools throughout the country are achieving a high degree of parental interest and participation in school programs through the use of volunteers. These volunteers are working on a one-to-one basis with children who have problems in certain subjects—reading or math, for example. Tests given on a before and after basis indicate that intensive, one-to-one assistance can generate as much as one- to two-year gains for children given individual encouragement and attention. These gains have been achieved in a short two- to three-month period.

Another example of the use of volunteer service sthat could prove effective is in the environmental area. Recruit Indian parents to provide aid and to assist in school projects in the improvement of the school environment. To facilitate such programs, the school may provide transportation and lunches as warranted for volunteers. The volunteer technique is only an example. Other means of increasing the quality of the education received must also be examined. For example, where conditions permit, would a greater emphasis on foster homes be more appropriate than dormitory life to provide better study and living experiences? What is the attitude of Indian parents toward such an emphasis?

Legal restrictions currently limit the use of volunteers in Federal programs. We are currently developing legislation proposed to remove this barrier, 31 USC 665 as it applies to BIA schools. Indian operated schools, however, do not have such a restriction nor do public schools. Encourage your staff and their dependents to volunteer their assistance to local schools in this regard.

To provide more meaningful measures of the education program and quality improvement, we must move beyond outputs such as "eighth grade graduates." While it is important to aggregate such information, no indication of quality is described. If additional funds for program improvements are mandatory, proposed better program measurements must be suggested. Please use your influence to develop and direct thinking toward the identification of more *quality-descriptive* outputs.

Use the staffing ratios provided by Education last year for planning the FY 1973–77 education program.

2. Social Services

One of the most innovative BIA activities developed in the past several years has been the Tribal Work Experience Program, which I hope to see expanded and made more flexible and placed under greater tribal management than presently is the case.

A principal complaint that I have heard against the program (in addition to the feeling that in many instances it is only *nominally* a tribal activity) is that the program clients do not engage in significant work activities which provide them occupational stepping stones out of the dilemma of underemployment and perennial welfare.

I would like to see the most imaginative use made of general assistance funds developing programs of social rehabilitation. If these funds are contracted through a tribe and efforts made to draw in additional funds from other Federal (including BIA) sources, dignified work-training programs can be developed and tied to subsequent on-the-job training activities in reservation-based industrial developments. Such efforts can and should be made integral parts of reservation development plans.

Several tribes already have negotiated contracts with BIA to provide foster care for local children who might otherwise be sent off the reservation into non-Indian homes. They are housed in tribal youth centers built either with local resources or with grants from agencies of OEO or HEW. Not only does this approach to foster care provide much needed jobs for community adults, but allows a community to rally together to attack social problems where they ultimately must be solved, in the community itself.

The Indian Development District of Arizona (IDDA) has expanded the foster home principle by taking over a former Federal youth detention facility and converting it into an intertribal *Southwestern Indian Youth Center*. Funded from HEW grants and from State sources, the IDDA board also has developed contracts with the Phoenix Area Office to provide foster care for delinquents and predelinquent boys, many of whom have been expelled from BIA boarding schools.

I am particularly concerned about the large numbers of young people who are expelled from our boarding schools each year, and have developed a policy which is being initially applied at the SIYC. This policy can and should be expanded to other tribal or intertribal youth centers that I hope to see developed in other parts of the country. I take the position that, if we expell a child from boarding school, admitting our inability to cope with his problems, and another institution is prepared to take him in, then the funds that supported him in boarding school can be withdrawn and used to continue his support elsewhere. This, incidentally, represents an excellent example of how the Bureau of Indian Affairs can gradually be transformed from an agency concerned primarily with program operation to a service agency.

3. Community Amenities

Most Indian communities face a difficult problem in providing a growing number of important municipal and social services in the absence of a local tax base. The needs are particularly evident in so-called Agency towns, both because of their size and due to the marked contrast between Indian poverty and the relative comfort of Federal employees concentrated there. We face a very important task in assisting tribal authorities to help turn these highly artificial "company towns" into more healthy, attractive and viable communities, while at the same time not raising the threat of taxation.

One suggestion, which on the surface may seem somewhat extreme but could make significant contributions to community growth, would be for the BIA to abandon its Agency compounds by transferring title of Government quarters to tribal housing authorities. Nont only would this assure that the assignment of rental quarters, whether for Indian people or for Federal employees, would be on a community-wide basis, but employee rents, which presently are going to the U.S. Treasury, could remain in the community and serve as a substitute for a local tax base. Naturally, a percentage of the rent would need to be retained to assure maintenance of the property. I am prepared to move in this direction if Indian tribes are interested. I hope that superintendents will keep an open mind to these suggestions and discuss them with tribal leadership.

A study of transfer of quarters, as well as a proposal to turn offices and certain other classes of BIA owned real property to tribal ownership, is being made. This would provide tribal income and establish maintenance jobs for community members.

Modifications in the traditional BIA road programs could lead to more responsive programs as well as increased jobs for local people. One suggestion, made by the leadership of a Southwest tribe, would turn supervision of the reservation road maintenance program over to a county road department, which already maintains a portion of the reservation road system. With the savings in supervisory costs, more Indian maintenance staff could be hired to provide services beyond what is now possible.

Do not overlook the use of Tribal Work Experience programs to assist in improving community facilities.

4. Economic Development

The FY 1973–77 programs are being developed in such a manner as to cause you and local leaders to estimate per capita income both before and after BIA input. If Indian people are not enjoying a higher estimated level of living in FY 1977 after the BIA investment has been made, then it is your responsibility to work with Indian leaders to point out this fact and to contribute to the design of new programs or generate new ideas to try to achieve the goal, within budget expectations.

In many instances, Indian communities lack natural resources that can be developed for employment opportunities and income. The people may, however, not be interested in the relocation concept. Under these circumstances, it is very important that a new emphasis be initiated in working with the nearby non-Indian communities to assist the economic future of the local Indian people. You and your staffs must redouble your efforts in this direction where appropriate.

The Indian Business Development Fund provides seed money to supplement private or public loans for business purposes on or near reservations. What commercial services are not currently available in Indian communities that are enjoyed in comparably populated rural, non-Indian communities? Use the Development Fund to assist in establishing or expanding where feasible such enterprises as grocery stores, service stations, laundromats, auto garages, barbershops, etc. What other services are missing from reservation communities, especially utilities? How can these utilities be provided in an expeditious manner?

Urge the development of programs and projects which create maximum income and employment. BIA and other agencies of Government remain and likely will continue to remain for sometime to come the largest single employer of reservation Indian people. Do not hesitate to think of Federal employment, whether in the Civil Service or in the form of tribal jobs created through contract, as a form of reservation economic development. Superintendents and tribal leaders should strive in such ways that maximum numbers of underemployed Indian people receive steady work. The salary freed from one GS–11 or 12 position can provide four jobs at the minimum wage level.

5. *Coordination*

The PM should not be drawn up solely by BIA officials. Only the Indian people themselves will be able to state their objectives and priorities in these areas. The objectives and questions enumerated above are to provide you and tribal people with a policy framework. Local conditions, desires, and circumstances must obviously be considered in program development. Coordinate your efforts with the tribal leaders.

Superintendents should "make the first move" toward tribal officials in this program cycle. *Please produce a separate copy of all PM materials for tribal review.* It will also be your responsibility to keep the tribes informed through the new system of budget adjustments during the development process.

I expect you to explain and discuss the Guidelines with all members of your staffs so that they will be fully aware of the policy guidance for the 1973 Program.

Your continued cooperation is very necessary to the successful development of the FY 1973 Program. Thank you.

LOUIS R. BRUCE, *Commissioner.*

Mr. LOESCH. I would like to say one thing, Senator, if it is appropriate. In the previous hearings on this subject before your committee, a number of allegations and accusations were made——

Senator KENNEDY. Yes.

Mr. LOESCH (continuing). Concerning both land and water problems. We might like to submit for the record the departmental position and what we have done on some of those specific matters, if that is satisfactory?

Senator KENNEDY. It would be very helpful. It would be very constructive and very helpful and we appreciate it. Very useful.

Mr. LOESCH. Thank you.

(The materials submitted by Secretary Loesch, relating to issues discussed at the subcommittee hearings of October 19 and 20, 1971, appear at the end of the record of those hearings, volume 1, at page 165.)

Senator KENNEDY. OK. I would like to come back with some other areas later on, but we can include your statement in its entirety as if read.

If there were any other particular points you wanted to highlight, please do.

(The prepared statement of Mr. Loesch follows:)

STATEMENT OF ASSISTANT SECRETARY HARRISON LOESCH, DEPARTMENT OF THE INTERIOR

Mr. Chairman and members of the committee: I am grateful for the opportunity to appear before you to discuss the record of Government trusteeship over Indian resources, to tell you where we are and where we are going, and to clear up, at least to some extent, the vast areas of misinformation and misunderstanding. Today, as apparently in all times past, the BIA and the Department of the Interior are strongly criticized for their failures in the field of Indian affairs, but at the beginning of this statement I want to give you a brief view of the current situation compared to the past.

You are well aware that the Nixon Administration has had a commitment to a change of direction in Indian affairs from its earliest days. During the 1968 campaign, President Nixon outlined his philosophy and goals. His directions have been followed by substantial employment of Indians in high Bureau posts, by Administration support of the Blue Lake bill, by his Indian Message to the Congress of July 8, 1970, by the far-reaching package of proposed Indian legislation which followed it, by supporting donation of federally-owned lands within reservations to the tribes, and by support of the monumental Alaskan Native Claims proposals. The Administration's credentials, as compared to either promises or performance by any past Administration, are outstanding. We are, however, lacking supportive action by the Congress.

What have we actually accomplished?

First, the tools: In the three years from 1969 to 1972 direct appropriations for the BIA increased by $159 million. Over the six preceding years, the comparable increase was only $46 million. The average annual appropriation in the last three years represents a 44% increase over the preceding three years. If you apply this same comparison to the other Interior Department Bureaus, the BIA has fared better than any, both in terms of amount and percentage of increase. The chart shows the dramatic upturn beginning in 1970, but you will notice that even before that the BIA was gradually gaining as compared to the other significant—and competing—Bureaus.

Of course, money means nothing unless it provides commensurate improvements.

For illustration, in our scholastic program alone, we went in these three years from $2.9 million to $15.1 million. Our Indian scholarship holders in institutions of higher learning went from 3300 to 9000 and the funding per scholarship nearly doubled from $880 to $1680. There are similar, if not quite so dramatic, increases in welfare and guidance services, in housing assistance—where we went from 2500 starts in 1969 to 8500 starts in 1972—in employment assistance, in educating close to home instead of boarding schools, and indeed in nearly all of the Bureau programs.

The burning issue here today, however, concerns not the "people programs," but the protection of Indian resources. This protection is a function of the Federal trusteeship responsibility. The term itself is frequently misunderstood, although I am sure not by this Committee. Of course, it applies to resources, not to persons, and while often compared to the duties and responsibilities of a private trustee and analogy is not exact. The assets of the trust must in this case be managed and administered with the consent of the beneficiary, that is, of the tribe or of the individual Indian. It is this factor which complicates the decisions which must be made, and which at times makes a wholly satisfactory decision very difficult to reach.

Abuses have doubtless occured in the past, and not being omniscient I cannot guarantee that none will occur in the future. I can state, however, that the Departmental understanding of trusteeship responsibility, the concern to carry it out to its fullest, and the determination to fully inform the tribes on matters affecting their resources so that they may take their own steps, if necessary, to protect them, are all of an entirely different order from the past.

President Nixon's Indian Message of last year is, you will agree, the most far-reaching and highest-level pronouncement on the subject which has ever been made by any Administration in the history of the United States, and we in the Department as members of the President's team regard it as a speciffic directive which we are bound to implement.

The history of mankind, as well as the history of the US, is a continuing process of re-evaluation of actions, attitudes and philosophies. This is particulzrly true in the Indian field. The climate of the Executive Branch, the Congress, and public opinion, in general, has in this area changed to such a degree that we are now in effect revisiting many actions which at the time were considered perfectly proper even by Indian communities. The evolution of the law is equally significant and the concept of long range planning which is comparatively new across the Government is also a significant factor. Manifestly it is impossible to immediately and completely correct all past action or omissions, but we are addressing ourselves on a priority basis to the protection of existing rights and the replacement of such eroded rights as we can reach. It does not seem improbable to me that different future attitudes may require further future reassessments.

Addressing particular resources, let us first look at land.

Mr. Chairman, in your opening remarks at the hearing on October 19th, you referred to the Government's flagrant abdication of its trust responsibilities to the Indian people. There was reference to the need to maintain the land base.

Indeed, there is. This is one of our major responsibilities as trustee of Indian lands and resources. Land has a special meaning to the Indian people. It is the basis for their whole religious and cultural way of life. It sustains the tribal and family identities.

Quite the contrary to what you and others may have been led to believe, the total amount of Indian-held trust land has been increasing for the past three years and, in fact, is greater than it was in 1965.

Individually-owned allotted land can be sold with the consent of the trustee. We are very careful in reviewing these sales, however, to assure that they are in the long-run best interest of the Indian owner. For example, an elderly person with no heirs who wants to live in more comfort; or a non-resident who wants to buy a house or start a business. We are also making every effort to assist tribes in purchasing allotted lands whenever a sale is to be made.

While the individually-owned trust land is gradually diminishing and will continue to do so, it has been more than offset by increases to the tribal land holding. This has come about both by purchases by the tribes to block up their land holdings and by Congressional gifts of Federally-owned lands within the reservation boundaries.

To carry out the recommendations in the President's Message to Congress on Indian affairs of last year, seven legislative proposals were submitted to the Congress. One of the most important ones is the Indian financing bill. It would make available through loan guarantees and insurance systems opportunities for tribes and individuals to obtain the financing they need to make land purchases. I hope that the Congress will see fit to consider and enact it at an early date. This proposal has been pending since July 1970.

Turning now to water rights. It is only recently that this nation has generally realized that its water resource is finite; that the use of it must be planned and allocations carefully made. This realization has brought into focus the trust responsibility for Indian water rights.

It should be make clear that many of the actions for which the Congress, and the BIA are now criticized in this area were routine matters at the time they occurred. Many of them were not only consented to but had the enthusiastic approval of the involved tribes at the time. I do not say that this made them *right*, and a current reevaluation is entirely appropriate. But, "plus ca change, plus la meme chose," and 50 or 70 years from now it may be that criticisms as severe as those we now levy against our predecessors may be levied against us. At any rate, it is only within the very recent past that either the Indian communities generally or the Government itself has addressed the question.

When the Department did so, we found our tools to some extent inadequate, and conflicts of interest in our way. This situation was the genesis of S. 2035, the Trust Council Authority bill, and also the genesis of interim correction within the Department. You are aware that Secretary Morton has announced and we are presently implementing the establishment of the Indian Water Rights Office. To make as sure as is humanly possible that it properly advocates the Indian viewpoint on resource trusteeship responsibility, it will consist mostly of Indians, its Advisory Board will be entirely of Indian nomination, and from the Commissioner it will have direct access to the Secretary. If you are interested, we will supply for the record its charter, but the whole concept is to arrange a running start for the Trust Council Authority when the Congress sees fit to establish that agency. I cannot forbear saying saying that there has been little movement by the Congress on this important matter since the submission to it of the bill in July 1970.

I also must warn you that the entire question of water rights in the West under the appropriation doctrine, under the Winters doctrine, and with the overtones of riparian rights which may apply there solely to reservations, is a most complex subject filled with uncertainties. It will take literally years to cast a full length cloak of protection around all Indian water rights which are determined to be valid and to separate those which are determined to be invalid. This is a labor not only for the Executive Branch, but for the Congress, the States, and not least the Courts. Also, it is going to cost substantial amounts of money. The entire Government must recognize the long term nature of the project if Indian water is to be fully protected.

The fishing, hunting, grazing and timber aspects of resources are also of interest and must also be protected and developed. Most of the current serious questions regarding these matters are now in litigation and I do not think I need give you details. I mention them only to indicate our awareness of and concern for resources other than land and water.

I am fully aware of this Committee's desire to zero in on cases, and I am prepared to answer your specific questions on specific issues and instances on which you desire the Departmental veiw. Before turning to those questions, however, I will appreciate it if the Committee will allow the Justice Department witness to give you a brief review of the status of the law concerning Indian water rights.

(The following memorandum entitled "Natural Resource Inventories and Assistance," was used as a fiscal year 1973 budget support paper by the Bureau of Indian Affairs and is included at this point in the record illustrate the BIA's concern over this issue.)

NATURAL RESOURCE INVENTORIES AND ASSISTANCE

The Bureau of Indian Affairs has fallen far short in providing American Indians adequate trust protective services. We propose a special thrust in Fiscal Year 1973 costing 5.0 million in three categories of "Natural Resource Inventories and Assistance" leading toward alleviating that inadequacy. The special emphasis categories and amount of requested funding of each in Fiscal Year 1973 are: (1) Water resource inventories—$1.75 million, (2) Land boundary determinations—$1.75 million and (3) Land-use planning—$1.5 million. The first two listed are interrelated since in the arid west where most of the land boundary disputes appear water is the key ingredient in the development of the real estate Beyond that, however, those items represent the most basic of our trust responsibilities and ones that have not and are not being performed. The three items proposed for meaningful emphasis are treated in the order listed above in the following paragraphs:

WATER RESOURCE INVENTORIES

To a greater extent than ever before in history, American Indians are facing critical water right issues. They need a strong unequivocal advocacy. President Nixon emphasized that requisite in his July 8, 1970 message. The Bureau of Indian Affairs should provide that essential, crucial advocacy in a competent and timely manner. Until and unless basic water resource inventories of the Indian reservations are completed, we as the trustee will lack the foundation for protection and development. We will continue failing to fulfill our obligation and thus prevent the establishment and maintenance of viable Indian communities. In addition, the trustee will be subject to justifiable claims based upon gross dereliction of the trust. American Indians, however, want their water—not recompense in dollars for its value lost to them in perpetuity.

Water is rapidly becoming the most important and valuable resource in Indian country. It is the catalyst for all economic development particularly in the western United States. Loss of Indian rights to the use of water threatens the destruction of Indian reservations. Time is critical. Daily, water belonging to Indians is being applied to non-Indian uses. Once non-Indian economies are built upon that water, it will be extremely difficult—if not impossible—to recover such water. The essential inventories must be completed at a rapid rate to prevent further irreparable damage to the Indians and to create a predicate upon which to preserve, protect, and establish the Indians rights to the use of water throughout the western United States.

Simply stated, we define a water resource inventory as a determination of the water needs for all purposes—present and future—as related to the supply available both in quantity and quality. Such determinations are as vital to the Lummis' in their attempts to become self-sustaining through acqua-culture conducted on their lands in Puget Sound as it is to the agrarian Pueblos along the Rio Grande in arid New Mexico or to the needy Sioux in the Missouri River Basin.

Current efforts underway to develop the "Western Water Plan" make water inventories for Indian Reservations more vital and immediately urgent. Under authority of the congressional mandate contained in P.L. 90–537, the Colorado River Basin Project Act authorizing the Central Arizona and other non-Indian projects, the Bureau of Reclamation is spearheading the preparation of "a general plan to meet the future water needs of the Western United States." That study is to be submitted in final form, not later than June 30, 1977 and has been code named Westwide. That study will cover all states containing or wholly west of the Continental Divide.

American Indians and Indian Tribes can establish rights to much of the remaining undeveloped water in the Western United States. History, both of the formative years of this nation and down to the present moment reveals that when Indian rights and properties are involved their constitutional guarantees are crassly disregarded.

We must be prepared with the essential ingredient information on Indian lands to be included in the Westwide Study. It is imperative for the Congress to have the complete picture and is important in effective cooperation with non-Indian neighbors, the States, the River Basins, and the Region. More elemental to American Indians in the Western United States is their belief that this is their last chance to prevent being planned out of existence.

We have been swamped with resolutions from tribes declaring this effort as number one priority and urgently requesting necessary funding. The most recent was transmitted by the Affiliated Tribes of Idaho following the recent Idaho Indian Conference saying, ". . . . . of particular importance is the funding and implementation of water inventory and application studies. Without vigorous assistance from the Federal Government the water resources of the Indian tribes stand in great peril and jeopardy. Loss of such rights constitutes a constructive termination of Indians, a dissolution and destruction of the social and economic Indian Community and a breach and abridgement of the solemn duties and treaties obligations undertaken by the United States toward the aboriginal inhabitants of this country. . . ."

For Fiscal Year 1973, we propose funding in the amount of $1,750,000 to make meaningful headway on water resource inventories at the most critical locations. Fund distribution would be in accordance with field priorities established following consultation with the various tribes as shown below:

Aberdeen area:	
Ft. Berthold	$100,000
Total	100,000
Albuquerque area:	
Pueblos	175,000
Southern & Ute Mountain Ute	75,000
Jicarilla Apache	50,000
Mescalero Apache	25,000
Total	325,000
Billings area:	
Flathead	100,000
Wind River	100,000
Crow	100,000
Northern Cheyenne	150,000
Fort Peck	100,000
Total	550,000
Portland area:	
Spokane	150,000
Yakima	100,000
Lummi	100,000
Fort Hall	100,000
Umatilla	50,000
Total	500,000
Sacramento area:	
LaJolla, Pala, Pauma, Ricon & San Pasquale	200,000
Agua Calliente	75,000
Total	275,000

We estimate that funding at this level for three successive years would complete the required inventories although we also recognize that the studies will likely generate considerable water litigation necessitating followup funding assistance.

Eight new positions (Engineers, Researchers and Draftsmen) will be required. Most of the work is proposed to be accomplished by contract with tribes or directly with Consultant Engineering firms.

LAND BOUNDARY DETERMINATIONS

The Bureau of Indian Affairs, in its efforts to provide trust real property managenent services to Indian owners of 50.3 million acres, has consistently fallen far short of its obligation in the area of providing land boundary assistance. Land surveys have not become an item for which money is appropriated annually, even though all must agree that it is absolutely essential in any action which physically affects the land or title interest in the land. Surveys are inseparable to the total function of property management. It is inconceivable that in today's real estate world anyone would proceed to buy, sell, lease, mortgage, exchange, partition, gift deed or build permanent improvements upon the land without first having a survey made to protect his interest. Should we not also provide the same services to Indian landowners?

For years the Bureau has been forced to proceed in real estate transactions on the assumption of boundaries. Trespass suits have often resulted in such actions. Not only are surveys required to support real estate services to owners but also to defend the rights of Indian people to title to their land. Pending today in courts, or before authoritative bodies, are cases of boundary determination, determination of relicted lands, identification and claims to accreted land or lands claimed by reason of avulsion. The Bureau, tribes and their attorneys must have the legal evidence obtainable only by surveys to defend Indian claims in these and other cases. At the present time the Bureau is totally unable to provide timely services even in the most pressing hardship cases.

Our most recent data indicate that there are 47 reservations that have survey needs at a cost of $3.3 million. These surveys represent over 12 million acres of Indian trust land. A total of 39,362 miles of new survey and 3,473 miles of resurvey is requested. In addition, 27,143 new monuments and 337 remonuments must be established. This work will primarily be accomplished by the Bureau of Land Management on a reimbursable contract basis. Some work can be done by private licensed surveyors with BLM verification of their field notes. The only staff involved in this request is for three Real Property Management officers to administer the survey program and three surveyors to work full time in the Northern Pueblos Agency, New Mexico.

The legal and economic significance of land surveys cannot be emphasized too strongly. Surveys are immediately needed in support of court action. For example, suits against trespasses must be initiated in the Northern Pueblos of New Mexico, where over $70,000 annually is lost due to trespass. The land pattern in the Northern Pueblos as well as in other locations of Indian land is often very complex, interspersed with fee-owned lands. The result is that some Indian lands do not have well-defined and established boundaries. Without such definition it is impossible to be certain of construction sites.

The proper determination of reservation boundaries is important to Indian people. Once encroachment begins upon Indian land, i.e., when fences are erroneously erected, dumping takes place, or lands are squatted upon, the only recourse left to the Indian people is long and costly litigation. The northern boundary of the Fort Apache Reservation, for example, was not well-defined, and encroachments have taken place by land developers on these very valuable Indian lands. The same is also true in the case of land squatters on contested Indian lands on the Missouri, Colorado and Arkansas Rivers.

Several cases of boundary disputes exist between Indian tribes and other Governmental agencies or States. The Walker River Paiutes, for example, are requesting title to Walker Lake relicted lands which are contiguous to existing tribal lands. These relicted lands must be surveyed to make an exact determination of the acreage claimed. In another case a retracement of the boundary on the south side of the San Carlos Reservation Mineral Strip is necessary to eliminate a three-mile unresolved offset. A survey is needed to establish boundaries, pending final legislation, of the land set aside for the Payson Band of the Yavapai-Apaches. In Alaska, surveys are requested for many Native townsite reserves, and the Navajo Indian Reservation has requested the survey of over 11.5 million acres of tribal land. These are but a few of the individual cases requested by 47 reservations. The Federal Government does have a definite responsibility in this area of trust management and must begin to meet these obligations.

The mere volume of work represented in the request speaks for the long delay in attacking the survey backlog and in providing an adequate level of service to the Indian people. The longer we wait in providing this service the greater backlog of potential litigation we are bringing upon ourselves and upon the Indian people. This request for $3.3 million is for a total of two years. Details of the requested $1.75 million for FY 1973 is presented under the Real Estate Services Program element.

Senator KENNEDY. Mr. Kiechel, Deputy Assistant Attorney General.

STATEMENT OF WALTER KIECHEL, JR., DEPUTY ASSISTANT ATTORNEY GENERAL, LAND AND NATURAL RESOURCES DIVISION, DEPARTMENT OF JUSTICE, ACCOMPANIED BY DAVID R. WARNER, CHIEF, GENERAL LITIGATION SECTION; AND FLOYD L. FRANCE, ASSISTANT CHIEF, GENERAL LITIGATION SECTION

Mr. KIECHEL. Mr. Chairman, I am Deputy Assistant Attorney General, Land and Natural Resources Division, and I am appearing today on behalf of Mr. Shiro Kashiwa, Assistant Attorney General in charge of the Land and Natural Resources Division. Mr. Kashiwa regrets he cannot be here today; he is suffering from an illness—a skin infection—and the combination of that and the cortisone medication makes him feel just not up to it. But I will convey your kind greetings to him, sir, and your congratulations as well as your sympathy.

I want to say that he is very concerned that the Subcommittee have the particulars as to the various matters raised in your previous hearings of last month which refer to activities and action by the Department of Justice. He has given a great deal of personal attention to this in an effort to supply as objectively and as factually as possible those particulars.

We reviewed the transcript of the hearings of October 19 and 20 of the Subcommittee and, identified the areas of main involvement; so far as we could, of the Department of Justice and its litigation; and have treated those cases and categories of cases in Mr. Kashiwa's statement.

So, if it is agreeable with the chairman, I would ask that Mr. Kashiwa's statement be made a part of the record. It is directly responsive to your request and to the matters raised at the last hearings.

Senator KENNEDY. We will make that a part of the record.

Mr. KIECHEL. Thank you. I have a copy here for the reporter.

(Prepared statement of Shiro Kashiwa follows:)

STATEMENT OF SHIRO KASHIWA, ASSISTANT ATTORNEY GENERAL, LAND AND NATURAL RESOURCES DIVISION, U.S. DEPARTMENT OF JUSTICE

As Assistant Attorney General in charge of the Land and Natural Resources Division, I have the honor of representing the Department of Justice at this hearing. I hope that I can add something to this Committee's already substantial knowledge concerning existing practices in the protection of Indian rights and resources.

I want to say first of all that the Attorney General and I fully support the President's July 8, 1970 request to establish an Indian Trust Counsel Authority and we support the other landmark proposals he made in the field of Indian affairs. These proposals have now laid before the Congress for 17 months. No more pressing an item is conceivable on the agenda of those who are interested in progress for Indians than to have the Congress move promptly to give consideration to what the President has proposed. Indian Trust Counsel hearings have just been held in the Senate last week. I hope, Mr. Chairman, that you and your colleagues on this Committee will use your influence with your distinguished colleagues in the Senate and your friends in the House to expedite giving a hearing to all the President's proposals.

All of us are looking for a new day for Indains. I am not here this morning to defend the decades and Administrations of the past. I join with the President and the Vice President and with good friends on both sides of the aisle in both Houses here, in the leadership that is being taken to make sure that ancient wrongs are remedied and that the Indian people of the 70's will move at a quickened pace toward self-determination.

The Blue Lake and Alaska Claims legislation which the President has submitted are two examples of the kinds of accomplishment in which we can all share and which we all want.

Indian water and other natural resource rights are an absolutely essential part of Indian life and in their protection lies the future of Indian economic and social development. Pending the Congress' approval of the Indian Trust Counsel Authority, the Department of Justice, I assure you, Mr. Chairman, will be diligent in the defense of those rights. When the Trust Counsel is in being, the Department will work with him and his staff, realizing that upon those new shoulders will be placed the principal litigative initiative.

The function of the Department of Justice with respect to Indian rights and resources is limited almost exclusively to serving as trial and appellate counsel in litigation in which these rights are asserted or defended. Inasmuch as the Department of the Interior has the primary responsibility in Indian affairs and the administration of reservations and tribal lands,[1] our appearance in such cases is usually at the request of the Department of the Interior. This Department must also look to the Department of the Interior to provide the necessary information and data to support the position of the United States in litigation involving the Indian property rights, including water rights.

We feel that our record in advocating and protecting Indian property rights speaks for itself. Review of the judicial decision declaring and defining Indian property rights over the years discloses that this Department has effectively advocated those rights in those cases in which the Department has not been required, in performance of its statutory responsibilities, to oppose the claims of the Indians. Most of the complaints and allegations that appear in the prior testimony before this Committee on this matter are so vague and indefinite, with respect to the Department of Justice, that it is difficult to respond to them.

With respect to water rights litigation, the doctrine of "implied reservation" is a matter of paramount importance to the Indians and to the people of the United States in general. The doctrine as first articulated by the Supreme Court of the United States in *Winters* v. *United States*, 207 U.S. 565 (1908) holds that when an Indian reservation is established to include specified lands, there is reserved by implication the right to use the waters upon or adjacent to the reservarion to fulfill the needs of the Indians for whose benefit the reservation was established. In *Federal Power Comm.* v. *Oregon*, 349 U.S. 435, 444 (1955), the Supreme Court further explained that by the reservation of lands within the public domain, the impliedly reserved rights to use water upon or adjacent to those lands for purposes of the reservation were insulated against effect by subsequent appropriations made under authority of state law, for the Desert Land Act of 1877, 19 Stat. 377, and its predecessor Acts, which are the only congressional authorization for private individuals to acquire rights to use the water which are appurtenant to the public domain, do not apply with respect to reserved lands. The "implied reservation" doctrine was expressly applied by the Supreme Court in *Arizona* v. *California*, 373 U.S. 546, 600 (1963) as basis for its decree determining the water rights of the several Indian reservations on the main stream and in the latter case, the Court applied its *Winters* and *Federal Power Commission* decisions to uphold the government's claims of reserved rights for a variety of other kinds of reservations.

While this year's Supreme Court decisions in the *Eagle River* cases[2] denied the contentions of the United States with respect to the scope of the consent statute, 43 U.S.C. 666, which I will discuss later, these cases squarely affirm the "implied reservation" doctrine. The Court stated in the *Eagle County* opinion:

> It is clear from our cases that the United States often has reserved water rights from the public domain. As we said in *Arizona* v. *California*, 373 U.S. 546, the Federal Government has the authority both before and after a State is admitted into the Union "to reserve waters for the use and benefit of federally reserved lands." *Id.* at 597. The federally reserved lands include any federal enclave. In *Arizona* v. *California* we were primarily concerned with Indian reservations. *Id.* 598–601. The reservation of waters may be only implied and the amount will reflect the nature of the federal enclave. *Id.*, 600–601

The Court also made it very clear in the *Eagle River* cases that questions pertaining to reserved rights, including the volume and scope of particular reserved rights, are federal questions subject to review by the Supreme Court after final judgment by the state courts in which those cases are pending.

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[1] R.S. 463 (25 U.S.C. 2).

[2] *United States* v. *District Court in and for the County of Eagle*, 401 U.S. 520 (1971); *United States* v. *District Court in and for Water Division No. 5*, 401 U.S. 527 (1971).

Any suggestion that the Department of Justice is now or ever has been less than an ardent advocate of the "implied reservation" doctrine as legal basis for the water rights necessary for the full utilization of the reservation established for the benefit of the American Indians is belied by this series of Supreme Court decisions. The decisions were made, not in spite of or contrary to the Depatment's advocacy, but in accordance with the arguments it and its individual lawyers presented.

In reviewing the testimony of the previous witnesses before this Committee on this matter, it appears that the allegations of failure on the part of the Department of Justice to represent the interests of the Indians adequately and properly relate primarily to three matters: the Pyramid Lake controversy, the water rights of certain Indian groups in New Mexico, and the handling of the Eagle River cases before the Supreme Court.

With respect to the Pyramid Lake controversy, we make no attempt to explain why the rights to the use of water for the maintenance of Pyramid Lake were not asserted in the *Orr Water Ditch* case [3] except to note that this suit was filed in 1913, nearly sixty years ago. It has been our experience, in the review of other water litigation of that vintage, that knowledge of hydrology was in its infancy at that time. In may instances water supplies were grossly over estimated. It is quite possible that at that time there was no thought that the diversions from the Truckee River would endanger Pyramid Lake. Obviously, this gave Congress no concern when it permitted the Newlands Reclamation Project and other non-Indian federal projects which utilize a portion of the waters of the Truckee River.

Considerable effort has been expended in the past several years by both the Department of Justice and the Department of the Interior in an attempt to arrive at a solution for the protection and maintenance of Pyramid Lake. Progress has been made. Recent regulations imposed by the Secretary of the Interior have resulted in increased inflow into Pyramid Lake. The official records show that the water level in the lake has been rising, rather than receding, since 1966. We have been advised that on September 2, 1971, the water level in the lake was 3,795.4 feet above sea level, which is approximately 11 feet above the low of 1966. We are on record in the United States District Court for the District of Columbia [4] with a commitment that appropriate action will be taken by the Department of the Interior and the Department of Justice to protect the water rights of the Pyramid Lake Piaute Tribe of Indians in Pyramid Lake and that if litigation is necessary to define and protect these rights, such litigation will be instituted and vigorously pursued in the appropriate court. We reaffirm that position at at this time.

With respect to the water rights of the Indians in New Mexico, most of the complaints appear to be related to the San Juan-Chama Trans-Mountain Diversion Project. It should be noted at the outset that this project was expressly authorized by Congress.[5] A careful examination of this legislation reveals that safeguards were carefully incorporated into this legislation to protect existing water rights and interests including those of the various Indian groups who would be affected by the project.[6]

All of the Indian Puebloes in New Mexico, acting through the All Pueblo Council, supported enactment of this legislation.[7] Under the provisions of the San Juan-Chama Act, water is to be diverted from tributaries of the San Juan River, a tributary to the Colorado River, and transported through a tunnel across the Continental Divide, into the Rio Grande watershed, to supplement the short supply of water in the Rio Grande Valley. Facilities are to be built for salvage and storage of local waters of certain tributaries to the Rio Grande which are upstream from where the imported water will be introduced into the Rio Grande. This will make more water available within these watersheds during the irrigation season. The water stored and used locally will be replaced in the Rio Grande by the water imported from the Colorado River stream system. This exchange water will insure that the natural water flow of the stream is not adversely affected by the project. The replacement water will be paid for by the users in the tributary units and not by those who receive replacement water in satisfaction of prior existing rights, among which are the rights of the Pueblo Indians to utilize the waters naturally in the several streams.

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[3] *United States* v. *Orr Water Ditch Company, et al.*, Equity No. A–3, United States District Court, District of Nevada.

[4] Memorandum filed in the case of *Pyramid Lake Piaute Tribe of Indians* v. *Morton*, Civil No. 2506–70 in the United States District Court for the District of Columbia on February 5, 1971.

[5] 76 Stat. 96 (1962), 43 U.S.C.A. 615ii–615yy.

[6] While it is true that the diversions from the Navajo River, which runs through Jicarilla Apache Indian Reservation, substantially reduce the flow of that stream, a minimum flow of approximately 50 cubic feet per second or 32,318,000 gallons per day is required under provisions of the San Juan-Chama Act in that stream for the protection of fish and aquatic life. We assume that when it approved the project, Congress made a determination that no greater flow in this River on the reservation was required to satisfy the needs of the Indians.

[7] House Document 424, 86 Cong. 2d Sess., P. 108, 109, Resolution of All Indian Pueblo Counsel.

The San Juan Chama project will substantially benefit the Indian Puebloes in the Rio Grande watershed. San Ildefonso, Pojoaque and Nambe Puebloes will be directly benefited by having additional water available for use from the Pojoaque tributary unit where they have been chronically short of water. The Tesuque Pueblo will be indirectly benefited. San Juan Pueblo will be directly and substantially benefited and Santa Clara will be indirectly benefited by the Llano unit. The six Puebloes within the Middle Rio Grande Conservancy District will be benefited from the project water supplied to the district in that more total water will be available for the district. It should be noted that the Puebloes themselves do not pay for the water received from the Middle Rio Grande Conservancy District. The United States pays all charges assessed for the water for the Puebloes.

The non-Indians receiving water from the San Juan-Chama project are required to pay for this water under repayment contracts. For the administration of the project, it will be necessary to have a determination of existing water rights in the watersheds of certain tributaries where units of the project would be constructed and in the watershed of the Chama River, which will act as a conduit for the imported water into the Rio Grande. Suits for the adjucication of these water rights were filed by the State of New Mexico.[8] At the express requests of the Nambe, Pojoaque, Tesuque, San Ildefonso, San Juan, and Santa Clara Puebloes, the All Indian Pueblo Council, the Jicarilla Apache Tribe and the Department of the Interior, the Department of Justice intervened in these suits filed by the State of New Mexico to determine existing water rights in the several tributaries of the Rio Grande within the watersheds of which the named Indian groups have lands susceptible of use with water diverted from the tributaries. In two cases so filed by the State, involving lands so situated of the Taos Pueblo, we have at the request of that Pueblo and the Interior Department taken the position that the Pueblo's rights cannot be adjudicated without consent and that such consent has not been granted.

Representatives of the Department of Justice have conferred on numerous occasions with members of the various Pueblo Indian groups and with their attorneys to discuss various aspects of these adjudications. There were no complaints as to the conduct of the litigation until these adjudications had been going on for several years. Then it was suggested by certain individuals that an adjudication of the entire Rio Grande stream system would be required to protect the rights of the Indian Puebloes on the main stream of the Rio Grande. Such an adjudication had been considered earlier and had been rejected because the task was so large as to be virtually impossible for all practical purposes. Obviously such an adjudication would require many years to complete. All of the Indian Puebloes on the main stream of the Rio Grande are within the Middle Rio Grande Conservancy District and receive their irrigation water from the Middle Rio Grande Irrigation Project. It was considered that under existing regulations and practices there was adequate control of water uses on the main stream of the Rio Grande for administration of the project. In the operation of the irrigation project in the Middle Rio Grande Conservancy District, I am advised that the Indian Puebloes have always received preference in the delivery of water when water supplies were short. Water is stored in El Vado Reservoir for the exclusive use of the Indian Puebloes in the Middle Rio Grande Conservancy District in times of water shortage. The records show that the Indian Puebloes on the main stream of the Rio Grande have never used all of the water available to them for irrigation since construction of the Middle Rio Grande Irrigation project.

The question of adjudicating the entire Rio Grande stream system was again considered when the issue was raised as to whether the adjudication of water rights on the tributaries adequately protected the Indian water rights. As already noted, the Department of the Interior and the Indian groups on the tributaries being adjudicated, with the exception of the Taos Pueblo, requested that we proceed with the adjudication of the water rights on tributaries. Of the other Indian Puebloes in the Rio Grande watershed, only two of them, San Felipe and Santo Domingo, sought intervention in these adjudications. Two other Puebloes similarly situated, on the main stream of the Rio Grande and receiving their water from the Middle Rio Grande Conservancy District, filed an *amicus curiae* brief opposing the intervention. It was the considered opinion of the Department of Justice that the best interests of the Indians would not be served by the intervention which would necessitate an adjudication of the entire Rio Grande so intervention was opposed. The Special Master and the District Court have both ruled against the intervention by Santo Domingo and San Felipe Puebloes and the question of intervention is now on appeal before the Court of Appeals for the Tenth Circuit. It is the intention of the Department of Justice to continue to oppose this intervention.

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[8] By agreement with the United States, all of these suits for the adjudication of water rights on the tributaries to the Rio Grande, except one, were filed in the United States District Court for the District of New Mexico. The one suit filed in State Court was removed, with the concurrence of the State of New Mexico to the United States District Court.

With respect to the Eagle River cases we are rather puzzled by the allegations of Mr. Simpson that he was promised an opportunity to examine the United States' briefs in these cases before they were filed in the Supreme Court. The only explanation we can offer is that there must have been a breakdown in communications and Mr. Simpson must have misunderstood. It is not the practice of the office of the Solicitor General to agree to afford an opportunity to private counsel to examine briefs of the United States and comment on them before they are filed with the Supreme Court. With the short deadlines and heavy work schedules in that office, it would be impossible to operate with such practices. It is our understanding that the question of whether Indians' rights were involved was discussed with Mr. Simpson and he was invited to submit an *amicus curiae* brief if he so desired but that no suggestion that he would be afforded an opportunity to review the Government's brief was made to him.

The primary questions before the Supreme Court in these cases were whether, under the provisions of 43 U.S.C. 666, the United States was required to submit to an adjudication of its water rights in Water District 37 under the Colorado Water Adjudication Act of 1943 and whether, under the provisions of 43 U.S.C. 666, the United States was required to submit to an adjudication of its water rights in Water Division 5 under the provisions of Colorado Water Rights Determination and Administration Act of 1969. We were informed by the Department of the Interior that there are no Indian lands and no Indian water rights in either Water Division 5 or Water District 37. Accordingly, it was the opinion of the Department of Justice that no Indian water rights were involved in either of these adjudications. For a variety of reasons, we continue of the view that the presence of Indian reservations on the mainstream of the Colorado, hundreds of miles below the Colorado-Utah boundary, the water rights for which were fully adjudicated and decreed in *Arizona* v. *California*, *supra*, and for the satisfaction of which there are more than ample supplies in the Lower Basin allocation, does not require or even permit a different conclusion. Nevertheless, out of an abundance of caution the Department's brief in *United States* v. *District Court in and for Water Division 5*, 402 U.S. 527 contained the following statement.

> To the best of our knowledge, none of the reserved water rights claimed by the United States in Water Division 5 relate to Indian lands. In the event that this Court should rule that 43 U.S.C. § 666 subjects Federal reserved rights in general to state adjudication, there would remain the further question (not presented by this case) whether the consent statute covers water rights held by the United States in trust for specific Indian tribes—frequently pursuant to treaty—rather than for the benefit of the general public.[9]

It was the opinion of the Solicitor General's Office and of the Land and Natural Resources Division that this was the best method of protecting potential Indian water rights rather than to argue with respect to them in the Eagle River cases where none in fact were involved. All of the lands and waters encompassed by Water District 37 are also a part of Water Division 5. The cases with respect to Water District 37 and Water Division 5 were briefed and argued as companion cases. The Court was clearly on notice in both cases that the question of sovereign immunity with respect to water rights held by the United States in trust for specific Indian groups was reserved for future determination in an appropriate case.

If the Congress is concerned that the rulings of the Supreme Court in the *Eagle River* cases may have made Indian water rights subject to adjudication in the State courts against the will of the Indians, and if this is considered to be undesirable by Congress, it would appear that the most effective way to remedy this situation would be to enact legislation amending 43 U.S.C. § 666 so that it expressly provides that this statute does not give congressional consent to adjudicate rights to the use of water held in trust by the United States for Indians. Should the Congress not wish to go this far, it could at least eliminate the problem of possible adjudication of Indian water rights in state courts by amending this statute to provide that all suits for the adjudication of water rights held by the United States may be removed to the appropriate United States District Court and shall not be subject to remand. The courts, and the Department of Justice, would of course be bound by such legislation.

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[9] **Footnote 3, p. 10 of United States brief.**

Over the years it has been the practice of the Justice Department, where it has received appropriate and adequately supported requests that it advocate or protect Indian rights in litigation, to comply with the requests to the best of the ability of the Department. Within the past several years the Department of Justice has successfully represented various Indians and Indian groups for recognition or defense of Indian rights in the courts in numerous cases. We have been requested by the Senate Interior and Insular Affairs Committee to submit a list of all such cases we have handled during the past ten years. When this list is compiled, I will furnish a copy to this subcommittee. In light of the current hue and cry respecting this Department's performance in connection with Indian water rights, it should be noted that the requests we have received to initiate actions for the protection or determination of Indian water rights have been very few.

Mr. KIECHEL. I and other members of the staff are here for the express purpose of answering any questions you may have with respect to Mr. Kashiwa's statement or otherwise; and I would identify for the purposes of the record those members of the staff who are accompanying me.

Here at the table is Mr. David R. Warner who is Chief of our General Litigation Section. We have Ed Lazowska, our Legislative Assistant; Floyd France and Donald L. Redd of the General Litigation Section.

Senator KENNEDY. is there an Indian Section at all in the Justice Department?

Mr. KIECHEL. In the General Litigation Section we handle the water rights and other litigation on behalf of Indian tribes.

Senator KENNEDY. But you don't have any particular group who has full responsibility for that?

Mr. KIECHEL. We have a group of attorneys who are knowledgeable and specialists in this field.

Senator KENNEDY. What about the Indian Claims Section?

Mr. KIECHEL. That is a separate section which is, as you know, devoted exclusively to the function of adjudicating the claims arising under the Indian Claims Act.

Senator KENNEDY. I suppose, from an Indian point of view, they they might look at it in one respect that there is a section to defend against claims of Indians, and yet there is not a section to pursue their interests. Would that be an unfair observation?

Mr. KIECHEL. Well, perhaps that appearance might give someone that idea.

Senator KENNEDY. How would you react?

Mr. KIECHEL. I would suppose the President's message in supporting and conveying the Indian Trust Counsel Authority bill relates to that. He says that it is the appearance of any conflict that is something to be avoided and that the credibility of the Federal Government is very important to the public, Indians and non-Indians, and that certainly is a consideration. I think, Senator, that the record is the determinative matter; that is, the record of performance of the advocacy by the Department of Justice in the Land and Natural Resources Division in behalf of the Indians; and I don't want to orate on this. I do want to talk about the specific accomplishments in specific cases. I want to talk about specific cases if that is your desire, and I would point to what I view as the very credible record of our Division and the Department of Justice in behalf of Indians, specifically with respect to the preservation and protection of their water rights.

The reserved right doctrine has been given a modern efficacy as a direct result of the advocacy of the Department of Justice. In our Division, we take some pride in that and we wish to pursue that same advocacy. We are ready and prepared to do that in specific cases at any time those cases are referred to us.

CONFLICTS OF INTEREST WITHIN JUSTICE

Senator KENNEDY. Well, do I understand your observation then is that you not are aware of the—either the real or the apparent conflict of interest within the Justice Department as it pertains to Indians' rights, but we are supposed to judge in terms of the performance as to whether the Indians rights are being adequately protected?

Mr. KIECHEL. We certainly support the administration's Trust Counsel Authority bill, and the fact that it would remove any appearance of conflict.

The direct answer to your question, Senator, is that I know of no case referred to us in which there has been any prejudice to the Indians or the Indian tribes because of any conflict with other governmental interests.

Senator KENNEDY. Well, perhaps we can get into some specifics later, but you certainly wouldn't disagree with the President when he observed in his 1970 message that:

> The Secretary of the Interior and the Attorney General must at the same time advance the national interests in the use of land and water rights and the private interests of Indians in land which the Government holds as trustees. * * * Under present conditions it is often difficult for the Department of the Interior and the Department of Justice to fulfill this obligation?

Mr. KIECHEL. I am certainly not disagreeing with that.

Senator KENNEDY. That is a pretty——

Mr. KIECHEL. I am not saying, Senator, there may not be conflicts within the Department of the Interior and otherwise which cause cases not to be referred to us. What I am saying is that when cases are referred to us, we are ready, willing, and able to take those cases and pursue them, and we do our utmost and give it an all-out effort.

Senator KENNEDY. I suppose the point is, you act when cases are referred to you.

Mr. KIECHEL. Yes, sir.

Senator KENNEDY. What action do you take independent of matters being referred to you?

JUSTICE DEPENDENCE ON INTERIOR

Mr. KIECHEL. We are dependent upon the Department of the Interior, as the possessor of the technical information and, in water cases, the hydrological information and the other information with which litigation can commence.

Senator KENNEDY. I gather from your last response, then, that you only take cases that are referred to you? You don't initiate; you don't have a group within the Department that is attempting to fulfill all of our responsibilities to the American Indian—that could initiate cases in order to pursue or protect their interests or, secondly, that might take a recommendation from the Interior Department and differ or disagree or challenge it in terms of fulfilling your responsibility? Does your mandate go to those areas? And, if so, how are you fulfilling it?

Mr. KIECHEL. Our primary purpose, as you know, Senator, is as a litigator. We are concerned about——

Senator KENNEDY. Who is protecting the Indians' interests?

Mr. KIECHEL. We are concerned about the protection of Indian water rights.

Senator KENNEDY. You mean your primary concern, then, is only litigation, not the general protection of the rights?

Mr. KIECHEL. It is protection through litigation. We are a litigating——

Senator KENNEDY. You don't see any responsibility to provide initiatives on your own within the Department of Justice for the protection of Indian rights?

Mr. KIECHEL. To the extent of our capability we try to be innovative and possess initiative but what I am saying, sir, is that with respect to litigation, which is our business, the bringing and defense of suits, we are not possessed of the capability and the resources, and indeed it has not been the Department of Justice's function in this area, or in most other areas, to go out and prepare the basic material for the suits. This is a function of what we call the client agency.

Senator KENNEDY. Of course, you have in terms of civil rights litigation?

Mr. KIECHEL. Yes, sir; that is right.

Senator KENNEDY. You initiate internal security cases, environmental protection cases, criminal cases; but in Indian rights——

Mr. KIECHEL. I think, sir; the general rule, to which there are exceptions, is that the Department of Justice litigates upon referral of its client agencies. This is true with respect to environmental litigation——

Senator KENNEDY. Dont't you in those areas that I have just mentioned, take an active responsibility toward the preparation and development of the material?

Mr. KIECHEL. We take an active responsibiltiy in this area, sir, and I don't mean to say otherwise, but with respect to one of the analogies that you make, enviromental litigation, we do depend mainly upon the Environmental Protection Agency for the referral, for the support, the evidence, on which environmental suits, pollution-control suits are brought. So that, consistent with the general format organization and function of the Department of Justice, to which there are exceptions, I acknowledge, our function is to take what facts and evidence we are given and what we can generate, and litigate.

Senator KENNEDY. Well, I was under the impression that your U.S. attorneys were quite active in the environmental field; is that not so? It has certainly been the experience up our way; they have taken a very active role. You have got, as I understand, the *Hudson*

River case that was developed wholly by the Justice Department. I am just trying to find out, exactly how you view the responsibility; and I think that it is a statement of fact that the Justice Department does, in the areas I have indicated, take an ongoing active responsibility in the development of these areas. And yet they are dependent, as you yourself mentioned, on Interior, for the development and protection of Indian rights?

Mr. KIECHEL. Well, with respect to environmental litigation, which is a function of our Division as well as Indian water rights and other Indian natural resources litigation—those are both priority items within our Division; and we do everything we can to promote the preparation of those cases. But I do want to make it clear that the Interior Department, in the case of the Indian litigation, and Environmental Protection Agency, in the case of the environmental litigation, has the administrative responsibility. We are the litigators and we certainly exercise our judgment and our initiative in that respect.

Senator KENNEDY. Well, let me ask you this: I wonder if one of the Indian tribes came to you and asked the Justice Department to protect their rights; they say they have got a grievance; they have a problem. They think their rights are being violated and they want your help. What do you do in that case?

Mr. KIECHEL. We want to hear what they have to say in conjunction with the Department of the Interior. Our contact is with the Solicitor's Office, the Secretary, of course, has the ultimate responsibility, so that we do in many cases confer with representatives of the Indians and the Indian tribes.

Senator KENNEDY. I don't think that was my question, whether you confer with them. My question was, what if they come directly——

Mr. KIECHEL. We listen—yes, sir.

Senator KENNEDY (continuing). To the Justice Department and ask you to represent them, to pursue their interests, protect their rights?

Mr. KIECHEL. Yes.

Senator KENNEDY. What kind of response would you give to them?

Mr. KIECHEL. We are attentive to that and we advise the Interior Department of this request we have gotten from the Indians directly; and we ask that they advise us as to their recommendations with respect to this matter.

Senator KENNEDY. So you go to Interior for that kind of a policy?

Mr. KIECHEL. We ask Interior for their recommendation; yes.

Senator KENNEDY. Who makes the decision whether you take their advice or pursue the case anyway?

Mr. KIECHEL. The ultimate litigation determination is ours.

Senator KENNEDY. Have there been any instances you can tell us about where you turned down Interior and decided to pursue a case on your own, turned down the recommendation of Interior in terms of pursuing an Indian claim?

Mr. KIECHEL. The illustration that comes readily to mind and as to which we have had a great deal of communication with the Pueblos, is the New Mexico litigation which was the subject of some discussion in your previous hearings, Mr. Chairman. In that case, which I would hold out as the usual procedure, we, in conjunction with representatives of the Solicitor's Office and the Bureau of Indian Affairs, conferred at length, discussed the bringing of those suits in an endeavor to find out whether it was the wishes of the particular Pueblos there involved that those suits be initiated on their behalf.

That is our procedure and we are certainly interested and attentive to any information that comes to us from the Indian tribes.

Senator KENNEDY. Well, I am sure of that.

Let's get to this: Have there been any circumstances where you have made a decision to move ahead on the protection of Indian rights, which has not been recommended by the Interior Department? Are there any examples when you have overridden the Interior Department's recommendations or where you felt they have not given sufficient consideration to Indian rights and you decided to go ahead on your own? I think it is important——

Mr. KIECHEL. I can't think of any off hand, Mr. Chairman.

Senator KENNEDY. So you really follow the recommendation of Interior on this?

Mr. KIECHEL. In most instances we do.

Mr. KENNEDY. Are there any instances where you don't that you know about?

Mr. KIECHEL. Well, perhaps we are talking about two things, or I am thinking about two things. We do customarily, when we have a reference either from the Indians or the Solicitor's Office, endeavor to assemble all the pertinent facts and information, and in that way we may press for some information which we think is important, and there may be in that process—there is discussion of these things, but I am trying to be as responsive as I can. My memory does not provide me with any illustrations.

Senator KENNEDY. You could submit it to us later on if you want to.

Mr. KIECHEL. If there are such, I will.

Senator KENNEDY. Good.

(The following statement was subsequently submitted by the Justice Department:)

We have given further thought to the question whether there are cases in which we have taken action at the request of an Indian or Indian tribe contrary to an Interior recommendation that no action be taken. We continue unable to cite any such specific cases in recent times and we have not gone into the records to see what might might have been done in this regard in times long past. The reasons why we look to and follow Interior's recommendations in this regard are many, and at least some of them have already been discussed. In summary, Interior is the agency which Congress has designated to administer the trust responsibility of the United Stated to the Indians. When that Department makes a determination that performance of this responsibility requires that certain litigative action not be taken we do not consider it a Justice function to overrule such determination. Secondly, the Technical expertise and the fact gathering capability which are absolutely essential to the successful litigation of claims in behalf of the Indians, and this is especially so in water rights matters, is in the agency charged with the administrative responsibility, not in Justice. Without a commitment from Interior to give its support to litigation, it is just plainly contrary to prudent litigation management for Justice to go ahead anyway.

We do not mean to suggest that we never disagree with Interior's recommendations. There are occassionally cases in which we decline to proceed in accordance with an affirmative recommendation, sometimes because it is our judgment that the requested action should not be taken. For example, we recently returned to Interior a request that action be filed to cancel patent issued to an Indian allottee near the turn of the century. Our reason was simply that the mistake which Interior sought to correct happened too long ago to take it to litigation in the 1970's. Sometimes though we do not disagree that action should be taken, we do not agree that the requested action is right. In such cases, we ordinarily attempt to reach an agreement as to the desirable course to follow rather than simply to ignore the request received and to go ahead on our own.

An example of such a situation is the 1964 request from Interior, referred to later in this transcript, to seek court approval of a change of use of the water right adjudicated by the Orr Water Ditch decree to the Pyramid Lake Indians from irrigation to fishery purposes. We asked Interior to reconsider that request because we believed the Indians should not have to give up their right to water for irrigation in order to be entitled to water for maintenance of the Pyramid Lake fishery. And as explained later, we continue to work with Interior as that Department endeavors to respond to our 1969 request for further information needed to proceed with a solution to the Pyramid Lake problem.

Mr. Kiechel. I would point out something that I think would be of interest and utility to the subcommittee, Mr. Chairman, and that is that we have been requested by the Senate Interior and Insular Affairs Committee to submit a list of all cases we have handled in the last 10 years for various Indians and Indian groups. We are working on that for the committee, and it was our suggestion that we submit that to the subcommittee here for your information.

(The list of cases appears in the appendix at p. 652.)

Senator Kennedy. That would be very good. We will recess for another vote. We will recess for 10 minures.

(Recess.)

Senator Kennedy. The subcommittee will come to order.

I again apologize; as you can well understand, there is very little that any of us can do about the interruptions for votes, but I appreciate your patience during the course of our hearing this morning.

We talked a little bit about the affirmative responsibility of the Justice Department in pursuing legitimate interests and rights of Indians, and I think in your response you defined that in terms of consultation with the Interior Department, exchange of ideas, communication with the various Indian groups, but ultimately making judgment based, as I would gather, pretty uniformly in terms of Interior's recommendations. Is that about right?

Mr. Kiechel. We are dependent upon them for the information and what you might call——

Senator Kennedy. Why are you so dependent upon them?

Mr. Kiechel (continuing). The litigation report. We don't have hydrologists and soil classifiers and we don't have these research specialists about which Secretary Loesch talked.

Senator Kennedy. Couldn't you contract these out or hire them yourself?

Mr. Kiechel. Well, it has not been within our functions to do so.

Senator Kennedy. Well, I mean you hire special witnesses, professional witnesses, in other areas?

Mr. Kiechel. When the case comes to court, of course, we have; but I am talking about the basic inventory as you were talking this morning with Secretary Loesch, the inventory of the water rights, the classification of the lands as to whether they were irrigable and how irrigable they are. These are the things which necessarily go with the agency which has the administrative responsibility to supervise and provide for the management of Indian reservations and it is not within the functions of the Department of Justice to undertake that kind of a role.

Senator Kennedy. What about section 175 of title 25, United States Code, which provides: "In all States and territories where there are reservations or allotted Indians the U.S. attorney shall represent them in all suits at law and equity"? Doesn't this provide the authority, if not the obligation, for direct Justice representation of Indians?

(Memoranda relating to applicability of 25 U.S.C. are contained in the appendix at p. 509.)

Mr. Kiechel. I didn't mean to suggest that there is any lack of authority on our part to represent the Indians.

Senator Kennedy. Well, still you are representing them the way the Interior recommends?

Mr. Kiechel. Not necessarily. I was trying to make clear the procedure, Mr. Chairman. With your indulgence, I might be able to make it more clear and also refer to a matter which was an open item in your hearings of last month. On page 205 of the transcript, Mr. Burch, the tribal chairman of the Southern Ute Tribe had stated that he had addressed a letter to the Attorney General with respect to the concern of the Southern Ute Tribe in connection with the representation of the tribe on its water rights. And he said very accurately that they had not received a reply.

That reply, which was sent later on in that same month, October, was to this effect, and I think it illustrates what—if I may, I would like to read it into the record:

> Dear Mr. Burch:
>
> This is in reply to your letter of September 30, 1971, in which you requested that the Department of Justice represent the Southern Ute Tribe regarding its water rights in the State of Colorado. The Department of Justice will, of course, represent your tribe in the adjudication of its water rights.
>
> Inasmuch as the Department of the Interior has the prime responsibility in Indian affairs and the administration of reservations and tribal lands, the Department of Justice must depend upon the Department of the Interior to provide the necessary information and data to support the position of the United States in litigation involving Indian property rights including water rights. We also look to the Department of the Interior for recommendations with respect to any litigation on behalf of the Indian tribes. Requests for representation by the Department of Justice, of tribal interests, should be made through the Department of the Interior.
>
> We have forwarded a copy of your letter to the Department of the Interior and requested that they provide us with the necessary information in order that we may take appropriate action to protect the water rights of the tribe. As soon as this information is received you can be assured that appropriate action will be taken.
>
> Sincerely, Shiro Kashiwa, Assistant Attorney General, Land and Natural Resources Division.

So, in answer to your last question, that is the procedure we invariably follow when we have a request for legal representation from an Indian tribe.

Senator Kennedy. Can you tell if there have been any instances where Interior has recommended an appeal of a decision adverse to Indians where the Department decided against that appeal?

Mr. Kiechel. There have been instances where there have been determinations by the Solicitor General contrary to the recommendations of the Department of the Interior; indeed there are instances in the Department of Justice where the Solicitor General determines matters of appeal contrary to the recommendation of the litigating Division, in this instance the Land and Natural Resources Division.

Senator Kennedy. Can you tell us about those, I mean, have you got, did you have some of those cases now?

Mr. Kiechel. I don't have any in mind, Mr. Chairman.

Senator Kennedy. Could you submit or let us know—I don't know of the number or volume, would it be extensive?

Mr. Kiechel. I shouldn't think it would be extensive.

Senator KENNEDY. If you could give us the number of cases and citations?

Mr. KIECHEL. We will undertake to do so and supply the information.

(The information referred to appears on page 489.)

Senator KENNEDY. Yes.

Now, have there been many cases which are referred to Justice from the Interior Department in your memory and where Justice did not take timely action on them?

Mr. KIECHEL. No.

PYRAMID LAKE

Senator KENNEDY. In 1969 in a letter to the Acting Attorney General, Mr. Melich to Mr. Taylor, Glen Taylor, Interior requested the Department of Justice initiate "at the earliest time possible, an action to adjudicate the rights of the Pyramid Lake Indians to the unused waters of the Truckee River in order to protect Pyramid Lake within the Pyramid Lake Indian Reservation, Nev., and to restore its fishery."

(The letter from Solicitor Mitchell Melich to Acting Assistant Attorney General Glen E. Taylor follows:)

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SOLICITOR,
Washington, D.C., April 16, 1969.

Hon. GLEN E. TAYLOR,
Acting Assistant Attorney General,
Land and Natural Resources Division,
Department of Justice,
Washington, D.C.

DEAR MR. TAYLOR: We request that the Department of Justice initiate, at the earliest time possible, a quiet title action to adjudicate the rights of the Pyramid Lake Indians to the unused waters of the Truckee River in order to protect Pyramid Lake within the Pyramid Lake Indian Reservation, Nevada, and to restore its fishery. There are unused waters of the Truckee which were not adjudicated under the decree in *United States* v. *Orr Water Ditch Company et al.*, Nevada Equity No. A3 (D.C. Nevada September 8, 1944). They are urgently needed for Pyramid Lake.

At the outset, we want to make clear our position on the proposed litigation with respect to present users of water from the Truckee and present and future users in the Lake Tahoe area. Our purpose is to confirm by litigation the rights of the Pyramid Lake Indians to flood waters of the Truckee and to water now both unused and wastefully lost. Such waters would go far to preserve the lake. Existing municipal and industrial uses of the Truckee in the Reno-Sparks area are protected by the *Orr* decree. The adjudication we propose would not affect those decreed uses. Further, as you know, the California and Nevada Commissioners have presented a new draft of a proposed interstate compact to govern use of waters of the Lake Tahoe, Truckee, Carson and Walker River Basins. This Department and yours have opposed that compact in its present form. However, we have suggested negotiation of a new draft. This suggestion is based on hydrological information now available which indicates that present and future uses in the Lake Tahoe basin, amounting to approximately 50,000 acre-feet per year (according to the present draft of the proposed compact) could be recognized by the United States without adversely affecting Pyramid Lake. We would, therefore, propose to recognize those uses in a newly negotiated compact. By not challenging existing uses on the Truckee or existing or estimated future uses in the Lake Tahoe basin, potent adversaries would be eliminated from the proposed law suit thus improving chances for a successful outcome.

Legislation ratifying the draft compact has been passed by the Nevada Legislature and signed by Governor Laxalt. Such legislation has passed the California Senate, but is still being considered by the Natural Resources Committee of the California Assembly, where some support for its revision exists.

The present announced intention of the states' Commissioners is to seek consent legislation in the Congress immediately after ratification by both states. Passage of such consent legislation would cut off assertion of the Winter's Doctrine claim of the Pyramid Lake Indians. For this reason we are asking for initiation of the litigation as soon as possible.

The lake is entirely within the Pyramid Lake Indian Reservation, Nevada. It has no outlet. The Truckee River which rises at Lake Tahoe is the only source of water for maintaining the surface level of the lake. Increasing demands by upstream users for the waters of the Truckee coupled with the location of Pyramid Lake at the very end of the river virtually preclude delivery of the water essential for the protection of the lake in the absence of adjudication. The unused waters of the Truckee are subject to the doctrine of reserved water rights with a priority of 1859, as discussed in detail hereafter. In our view, the United States ought to facilitate the use of such rights for protecting Pyramid Lake, restoring its fishery, and making possible related recreational development on the reservation.

In recent years, several studies of development potential of Pyramid Lake have solidly confirmed the substantial economic benefits which would flow both to the Indians and to all in the Reno-Sparks and neighboring area from the maintenance of the lake and restoration of the fishery. These studies indicate that the lake has a number of unique and valuable characteristics. Among these are its value as a fishery for Lahontan cutthroat trout; its geological features characteristic of Lake Lahontan, the only remnant of the ancient inland sea and Anaho Island National Wildlife Refuge with its pelican rookery, one of the few places in the country where the white pelican breeds. Further, the economic benefit to the Indians and all persons in the region, now financially depressed, is in itself a compelling reason for the United States to take action necessary to protect Pyramid Lake. In addition, the history of the loss of Pyramid Lake fishery points up the obligation of this Department, as trustee for the Indians, to take reasonable measures to prevent further loss and to restore, to the extent possible, these values of the lake.[1]

To protect the lake it is necessary that water of the Truckee River be adjudicated as having been reserved for the Pyramid Lake Indian Reservation at the time it was established. Pyramid Lake was withdrawn along with surrounding lands from the public domain and set aside for Indian use in 1859. The area was established by Executive Order of March 23, 1874, as Pyramid Lake Indian Reservation. The United States has held title to the entire lake and surrounding lands since 1859 for the use and benefit of the Paiute Indians. In every respect the lake is as much a part of the reservation as are the surrounding lands. Between 1870 and 1920 the important means of livelihood for the Indians on Pyramid Lake Reservation was the yield of fish from the lake and adjacent waters.[2]

The fact that when the Pyramid Lake Indian Reservation was established the lands were considered adequate for the Indians largely because of the fishery (see note 2) made the fishery the equivalent to potential crop production from lands of other Indian reservations such as those involved in the case of *Winters* v. *United States*, 207 U.S. 564 (1908). The very establishment of the reservation presupposed the existence of the fishery.[3] *The United States having expressly*

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[1] The diversion of large amounts of Truckee River water to the Newlands Reclamation project contributed to the rapid decline of the surface level of Pyramid Lake. This in turn brought about erosion processes which formed an extensive delta at the mouth of the Truckee River over which water flowing into the Lake spread out in a thin sheet. Several kinds of trout, for which Pyramid Lake in past times was famous, left the lake by way of the Truckee River for spawning. The delta which formed at the mouth of the river as the surface level of the lake declined became an impassable barrier to these fish which have now become all but extinct.

[2] In *United States* v. *Walker River Irrigation District*, 104 F.2d 334, 338 (9th Cir. 1939), the Court quoted from the request to the Commissioner of Indian Affairs that these lands be set aside. The lands were described as isolated spots (*embracing large fisheries*) surrounded by mountains and deserts. Although only a small portion of the land was suited for agricultural purposes it was believed there would be sufficient substenance for the Indians in view of the fish which they could obtain from Pyramid Lake.

[3] In *United States* v. *Sturgeon*, 27 Federal Cases, No. 16413, 1357 (D. Nevada 1879), the Court remarked on the purpose of reserving Pyramid Lake for the Indians in a case involving the Indians' right to fish in the waters of the lake, and held: "The president has set apart the reservation for the use of the Pah Utes and other Indians residing thereon. He has done this by authority of law. *We know that the lake was included in the reservation, that it might be a fishing ground for the Indians.* The lines of the reservation have been drawn around it for the purpose of excluding white people from fishing there except by proper authority. It is plain that nothing of value to the Indians will be left of their reservation if all the whites who choose may resort there to fish. In my judgment, those who thus encroach on the reservation and fishing ground violate the order setting it apart for the use of the Inidans, and consequently do so contrary to law." (Underscoring added.)

reserved Pyramid Lake for the Indians with the purpose of providing a fishery within the reservation, reserved a sufficient amount of water of the Truckee River flowing into the reservation's lake to maintain the fishery. See *Arizona* v. *California*, 373 U.S. 546, 595–601 (1963); *Alaska Pacific Fisheries Co.* v. *U.S.*, 248 U.S. 78, 87 (1918).

The Pyramid Lake Indians have decreed rights in the Truckee for water for irrigation but no decreed rights for maintaining Pyramid Lake. *United States* v. *Orr Water Ditch Company et al.*, *supra*. In our opinion the *Orr Ditch* decree is *res adjudicata* only as to the rights of the Indians for irrigation water, that being the only Indian claim which was reduced to judgment in the *Orr Ditch* proceeding.

The first two claims under the *Orr Water Ditch Co.* decree are awards to the United States with a priority of December 8, 1859, of about 30,000 acre-feet for the irrigation of Pyramid Lake Reservation lands. The decree is specific as to the use of water under the rights adjudicated to the Indians. The quantity reserved is only the amount needed to irrigate the specified acreage at the rates per acre established.

By contrast the award to the United States for the Newlands project named the following purposes for which water might be diverted: "* * * for the irrigation of * * * lands on the Newlands Project, for storage in the Lahontan Reservoir, for generating power, for supplying the inhabitants of cities and towns on the project and for domestic and other purposes * * *" under such regulation as the United States might make or desire except as to limits on amounts which might be allowed per acre for irrigation.

A comparison of the provisions indicates that the only water rights for Indian lands which are *res adjudicata* under the *Orr Ditch* decree are irrigation rights. Water rights necessary to protect Pyramid Lake fishery and the lake itself as a part of the reservation were not adjudicated in *Orr Ditch*.

The doctrine of reserved water rights as developed in *Winters* v. *United States*, *supra*, and *Arizona* v. *California*, *supra*, stated broadly, is that the establishment of reservations by the United States reserved the water necessary for carrying out the purposes of the reservation. Considering the importance of Pyramid Lake in the creation of this reservation, we conclude that, as of 1859, the United States reserved water of the Truckee necessary to protect the Pyramid Lake fishery and maintain the lake for related purposes.

The obligation of the United States to prevent the destruction of Pyramid Lake as an essential part of the Pyramid Lake Indian Reservation necessitates our request that your Department institute a new proceeding unrelated to the *Orr* proceeding to assure delivery of the necessary water to Pyramid Lake Reservation.

The importance to the region and to the Indians of preserving Pyramid Lake is pointed out in two studies of the recreational development potential of the lake. These studies are now nearing completion. When complete they will be immediately forwarded to you. Hydrological studies are underway to determine the amount of water necessary for the purposes here discussed. We shall send this information to you in the very near future. We shall of course cooperate with you in any way possible in this matter.

Again we request early initiation by your Department of this important litigation.

Sincerely yours,

MITCHELL MELICH,
Solicitor.

Senator KENNEDY. Was this suit filed, do you know?

Mr. KIECHEL. This suit has not yet been filed. That letter was replied to in a very short time with a letter from the Assistant Attorney General, Shiro Kashiwa, asking the Solicitor, Melich, for certain specified information which was necessary for the preparation of the lawsuit, information including the hydrological situation on the Truckee, the identity of the defendants, the water supply, and such other necessary constituents to the preparation of a suit for the adjudication of water rights.

(The letter from Assisant Attorney General Kashiwa to Solicitor Melich follows:)

May 8, 1969.

Mitchell Melich, Esq.,
Solicitor,
Department of the Interior, Washington, D.C.

Dear Mr. Melich: This will acknowledge receipt of your letter of April 16, 1969, requesting we initiate a quiet title action to adjudicate the rights of the Pyramid Lake Indians to the unused waters of the Truckee River, not adjudicated by the case of *United States* v. *Orr Ditch Company, et al.* (Equity No. A3 D.C. Nevada).

You state that you will send us when completed two studies of the recreational development potential of Pyramid Lake as well as hydrological studies showing the amount of water necessary for such purposes.

In addition to such studies, it is requested that a full litigation report be furnished which should include, among other things, the following information:

1. The names and addresses of the proposed defendants, and a specification of their respective rights and location of their use of Truckee River water.
2. The quantity of Truckee River water presently unused.
3. The percentage of the unused water which, if decreed to the Pyramid Lake Indians, would flow into Pyramid Lake.

We would also like to be advised regarding the resident population of the reservation and the number of members of the tribe who are not resident there.

Upon receipt of this information, we will be in a position to evaluate the problems involved, including the type of action and the appropriate forum for any such action.

Sincerely,

Shiro Kashiwa,
Assistant Attorney General.

Mr. Kiechel. I have been eagerly awaiting that information, Mr. Chairman. A task force that has been put together is soon to render its final report on the Truckee, I am told, and will have the type of information which has been lacking heretofore, which will support the kind of a suit requested on behalf of Pyramid Lake Indians on the Truckee River.

Senator Kennedy. What about it, Mr. Loesch? What can you tell us?

Mr. Loesch. Yes, Mr. Kiechel is entirely accurate, Mr. Chairman. It became very clear as you are undoubtedly aware, that the Pyramid Lake question is an extremely complicated one. It was necessary for us to do a great deal of investigation in order to frame, to allow Justice——

Senator Kennedy. Not terribly complicated to the tribe, I wouldn't think. They are just losing their water and losing their livelihood.

Mr. Loesch. Mr. Chairman, let me say this: That since that letter by us to Justice in the spring of 1969, the Paiute Tribe has not lost one drop of water and, furthermore, as long as I am in the chair it won't. Despite the avid animadversions of the task force, I look upon it as a great thing and the developer of the kind and type of information we have to have to do a good job for the Indians, and I expect to proceed as quickly as possible.

Senator Kennedy. Of course, I suppose we are fortunate that we have had the most extensive rain and snowfalls over the period in the last couple of years that we have had in that part of the country, have we not?

Mr. Loesch. Yes, sir. I am afraid we can't take credit for the fact that Pyramid Lake is higher now than it was in 1967 except that we have reduced the intake to some extent out of the Truckee into the TCID.

Senator KENNEDY. How much, to what extent?

Mr. LOESCH. Well, I can give you the figures. It is right here. In 1971—the figures are not entirely in—we estimate there will be 400,000 acre-feet altogether delivered to TCID. In 1970 there were 417,000; 1969, 409,000; 1968, 394,000; in 1967, 427,000.

Senator KENNEDY. So, it has really gone down since 1967?

Mr. LOESCH. Well, not much, Mr. Chairman.

Senator KENNEDY. I know, but we were talking about going up a few minutes ago.

Mr. LOESCH. No, no. I am talking about the diversions, away from Pyramid Lake have gone down, not much but a little.

Senator KENNEDY. I see.

Mr. LOESCH. And the fact that the diversions have gone down, combined with the fact we did have excellent rainfall or, rather precipitation those years, has resulted in the increase in Pyramid Lake.

Senator KENNEDY. What sort of Indian participation has there been in terms of the task force?

Mr. LOESCH. Not any, because they refused to join it. The Paiute Tribe was invited to have an actual member on the task force and it refused on the basis that it thought it was just another bureaucratic exercise, and so they have not had an active member although they were the first invited to be on it.

Senator KENNEDY. Why did they think it was just another bureaucratic study?

Mr. LOESCH. I don't know, except just simply to say they didn't trust us.

Senator KENNEDY. I think last year Senator McGovern and you had an exchange of views on this. I am reading from the record:

> Senator MCGOVERN. And you are convinced the members of the task force are free of the conflict of interest charge that might be raised for complicated matters of this kind to be resolved?
>
> Secretary HICKEL. I will ask Assistant Secretary Loesch to anwser that.
>
> Mr. LOESCH. I question, Mr. Chairman, whether in any such situation you get rid of in a committee or task force an inherent conflict of interest because members of the task force are federal employees who in their daily jobs belong to some bureau or another.

(See generally the government officials' testimony on the Trust Counsel Authority bill, reprinted in the appendix of volume 1 of these hearings at p. 228.)

Senator KENNEDY. Do you think it was that conflict of interest that made the Indian tribes suspect of the——

Mr. LOESCH. I doubt it, Mr. Chairman. I think their reservation was more on account of the fact there were representatives of California and Nevada on the task force. Nevada, the State of Nevada and the State of California, together with the Interior Department, have representatives on the task force and it is my impression, although I couldn't swear to it, that the Paiutes were of the feeling, felt that the Nevada delegation to the task force would have more influence than they sould and for that reason didn't want to commit themselves to participate.

Senator KENNEDY. Irrespective of their participation, why do we have to wait until the total task force's report is filed to hold up any kind of judicial action? Why couldn't you have selected out the kind of information Justice wanted and they would have moved ahead?

Mr. LOESCH. Mr. Chairman, that is what I was explaining a while ago. The concept of inventory is a complicated one. It does not mean just figuring out how many acre-feet should go into the lake or anything else; you have got to go through the whole study of the river basin, the drainage area, to determine what the soil—you have got to have all sorts of reviews of soil quality, soil amount, water amounts, salinity factor, everything you can think of, and this is something you can't do in 2 weeks.

I should say, Mr. Melich reminds me, there are also involved in this court decrees, two court decrees, at least, on the contracts which the government has made in previous years with the irrigation district, and various complications which require good preparation before Justice could possibly be prepared to file a truly good suit.

You may be aware that the Indians themselves, through the California Indian Legal Services, I think, filed a suit. We felt that that was not competent representation for the tribe because they found themselves faced with exactly the same thing that we were, that is, they didn't have sufficient information to properly frame and pursue a lawsuit with any expectation of coming out at the right end of the horn.

Senator KENNEDY. Didn't they sue the United States in that case?

Mr. LOESCH. Yes sir, they did.

Senator KENNEDY. This, of course, is not a new issue or question. Going back to November 2, 1964, the Department of the Interior asked Justice to bring an action to allow the Indians to use part of their water under the water ditch decree for maintaining the lake.

(The letter of Nov. 2, 1964, from Interior Solicitor Frank Barry to Justice Department Assistant Attorney General Ramsey Clark, follows:)

NOVEMBER 2, 1964.

Hon. RAMSEY CLARK,
Assistant Attorney General,
Lands Division, Department of Justice,
Washington, D.C.

DEAR MR. CLARK: On October 6, 1964, the Secretary of the Interior approved and adopted a report, a copy of which is enclosed, entitled "Action Program for Resource Development of the Truckee and Carson River Basins, California-Nevada." Recommendation No. VI in the report is that the Secretary recommend to the Department of Justice an amendment of the Truckee River final decree removing the limitation on the Indian decreed water rights to permit their use for purposes other than agricultural use. The Truckee River flows into Pyramid Lake which is entirely within the Pyramid Lake Indian Reservation, Nevada.

The recommendation regarding Indian water rights in waters of the Truckee River was based in part on our views, expressed herein, as to whether the Indians of Pyramid Lake are entitled to use, for purposes other than irrigation, a portion of the water rights awarded to them in the case of *United States* v. *Orr Water Ditch Company, et al.*, Nevada equity No. A 3 (D.C. Nevada, September 8, 1944), which was an adjudication of water rights in the Truckee River. The Indians want to use part of their decreed water for reestablishing the fishery at Pyramid Lake.

The only source of water for reestablishing Pyramid Lake fishery is the Truckee River which flows from Lake Tahoe in California across northern Nevada for approximately 85 miles and empties into Pyramid Lake on the Pyramid Lake Indian Reservation. As the Indians are located at the end of the Truckee River where it flows into Pyramid Lake, they receive only the amount of water which is not taken from the river by users who divert water before it reaches Pyramid Lake Reservation.

Pyramid Lake was once a well known fishery, particularly famous for Lahontan trout. The fishery deteriorated markedly as upstream diversions of Truckee River water (including those for the Newlands Reclamation Project) decreased the amounts flowing into the stretch of the river which is located on the reservation and which empties into Pyramid Lake. The problem of the protection of Pyramid Lake fish has been a matter of concern and study by the Department for many years during which time there have been numerous complaints on behalf of the Pyramid Lake Indians that the normal flow of the Truckee River has been diverted to such an extent that it resulted in the rapid decline in the surface level of Pyramid Lake and brought about the formation of a delta where the river flows into the lake. The delta and erosion processes have injured the fishery through the formation of a barrier which is impassable to fish. As certain varieties of trout which inhabited Pyramid Lake needed to travel from the lake to the river to spawn, the delta and erosion processes at the mouth of the Truckee River all but eliminated such fish from the lake. The construction of a fishway would permit improvement and eventual reestablishment of the fishery, but a fishway requires a stablized continuous flow of about 35 cubic feet per second of Truckee River water. According to departmental records, the flow of the Truckee River for use by the Pyramid Lake Indians is not sufficient to provide the amount of water necessary for irrigation of presently irrigated reservation lands (approximately 5,000 acre feet) and, in addition, the amount needed to reestablish the fishery. (See table showing monthly flow of the Truckee River available to Numana Dam for Pyramid Lake Indians in "Reports and Findings of the Secretary of the Interior on the Washoe Project;" H.R. Doc. No. 181, 84th Cong., 125 (1955); and memorandum of May 5, 1943, by Acting Director of Irrigation, on "Pyramid Lake Indian Reservation, Nevada.") Consequently, measures to permit an increased flow of the Truckee River to reach Pyramid Lake need to be adopted if the fishery is to be reestablished. The court decree adjudicating water rights in the Truckee River will be considered first.

The *Orr Water Ditch Company* case, *supra*, recognized that the Pyramid Lake Indians are entitled to the earliest priority, dating from December 8, 1859, for water rights in the Truckee River of any of the claimants under the decree. Water rights were decreed for the irrigation of reservation lands and for incidental and domestic livestock use by the Indians. But water rights necessary to protect the Pyramid Lake fishery were neither recognized nor mentioned in the decree. For a number of reasons, principally the conspicuous difficulty and expense of irrigating and cultivating the land, much of the land for which water rights for irrigation were awarded was never cultivated. Thus, irrigation water for such land, for which the Indians have the earliest priority of any of the claimants of Truckee River, has never been used by the Indians. Instead, much of the water to which the Indians are entitled for irrigation, has been diverted from the river and used by persons located upstream from Pyramid Lake Reservation whose priorities are junior to the Indians.

In a memorandum of May 5, 1955, to the Commissioner of Indian Affairs, the Associate Solicitor of Indian Affairs discussed the use of Truckee River water rights adjudicated for the irrigation of lands on the Pyramid Lake Reservation in the case of *United States of America* v. *Orr Water Ditch Company, et al., supra.* The memorandum replied to the Commissioner's question whether water available for the irrigation of Pyramid Lake Indian lands might be allowed to flow into Pyramid Lake in aid of the fish resources of the Reservation. The Associate Solicitor's memorandum held that the approximately 30,000 acre-feet of water per year to which the Indians are entitled for irrigation and domestic uses under the Truckee River decree could not be used for the Pyramid Lake fishery since the decree is specific as to the use of the water under the rights adjudicated to the Indians.

The first two claims under the *Orr Water Ditch Co.* decree are awards to the United States with a priority of December 8, 1859, of water rights for Pyramid Lake Indian Reservation lands. With respect to the first claim the decree provides that "For the irrigation of 3,130 acres of Pyramid Lake Indian Reservation bottom lands, plaintiff, the United States of America is entitled and allowed to divert from the Truckee River through the Indian Ditch * * * not exceeding 14,742 acre feet of water in any calendar year * * * *provided that the amount of water so diverted during any such year shall not exceed 4.71 acre feet per acre for the aggregate number of acres of this land being irrigated during that year*, and further provided that the amount of water applied to the land shall not exceed four acre feet per acre for the aggregate number of acres of this land being irrigated during any calendar year." (*Italics* added.)

The second claim in the decree grants to the United States a right to divert water for the irrigation of 2,745 acres of Pyramid Lake Indian Reservation bench lands "* * * *provided that the amount of water for bench lands shall not exceed during any calendar year 5.59 acre feet per acre diverted from the river, nor exceed during any calendar year 4.1 acre feet per acre applied to the lands, for the aggregate number of acres of this land being irrigated during any year.*" (Italics added.)

The decree also provides that these awards are expressly made and the water allowed for the United States and for the Indians belonging on Pyramid Lake Reservation and for their use and benefit and is not allowed for transfer by the United States to others than the Indians if the land should not remain in the Reservation.

The underscored portions quoted above of the first two claims recognized under the decree plainly condition the right of the Indians to the water on its use for irrigation of the lands, allow a small amount of water in addition to that needed for irrigation (presumably for domestic and livestock use),[1] and limit the amount to which the Indians are entitled during each calendar year by the number of acres of land being irrigated during that year. The way in which the decree is written permits the diversion of the total 30,086 acre feet allowed under the first two claims *only* if the entire 5,875 acres of land for which diversions are allowed are being irrigated during a given calendar year, and to the extent that a smaller area of land is being irrigated, the amount of water which may be diverted for Pyramid Lake Reservation is proportionately decreased. As the total award of water rights for Indians is measured by and expressly limited by the aggregate number of acres being irrigated during any year, irrigation of the land is a condition precedent to the use of water awarded under the first two claims of the decree. These rights are not available for reestablishing the fishery unless the restrictions are removed which measure the volume of water to which the Indians are entitled during any year by the aggregate number of acres being irrigated during that year. We know of no way of disregarding or avoiding the restrictive use attached to Indian water rights in this award without further court proceedings.[2]

One of the general provisions of the decree, however, permits changing, "in the manner provided by law," the purpose for which water awarded under the decree may be used. This provision is:

"Persons whose rights are adjudicated hereby, their successors or assigns, shall be entitled to change, in the manner provided by law the point of diversion and the place, means, manner or purpose of use of the water to which they are so entitled or of any part thereof, so far as they may do so without injury to the rights of other persons whose rights are fixed by this decree."

The requirement that changes in use of water be made "in the manner provided by law," with reference to water rights on Indian reservation lands, necessarily means in the manner provided by Federal law since Federal law is the source of water rights on Indian reservation lands. Until recently, cases involving reserved Indian water rights have not discussed the question whether the use of these rights is limited to agricultural purposes. Before considering this question, certain particular matters regarding Pyramid Lake Reservation need to be mentioned.

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[1] One of the general provisions in the decree is that water users under the decree who need water for livestock and domestic purposes are entitled to such amounts of water as are necessary for watering stock and for domestic purposes as follows:

> "The above named parties [parties in the proceeding] who so appropriated water for irrigation have also used and in addition thereto are entitled and allowed to use water for livestock and domestic purposes, but only in such amounts as may be necessary for watering stock and for domestic purposes; provided that the priority in respect of the use of water for livestock and domestic purposes of any person shall be identical with the priority of such part for irrigation."

Another general provision in the decree provides that:

> "except as herein specially provided no diversion of water into any ditch or canal, in this decree mentioned shall be permitted except in such amount as shall be actually, reasonably necessary for the economical and beneficial use for which the right of diversion is determined and established by this decree. The amounts of water hereinbefore allowed are declared to be sufficient for the uses herein mentioned, and any and all use of water in excess of such decreed amounts is declared to be wasteful, and all wasteful or excessive use of water is hereby prohibited."

[2] An introductory paragraph of the *Orr* decree names a number of the purposes for which water rights recognized by the decree are to be used including generating electricity and power, watering, livestock, domestic uses, "and other beneficial purposes." A memorandum of March 27, 1964, by the Assistant Commissioner, Bureau of Indian Affairs, suggests that the reference to "other beneficial purposes" in this introductory paragraph authorizes use by the Pyramid Lake Indians of water awarded for irrigation for reestablishing their fishery. This is incorrect. The general provision which lists some of the purposes for which Truckee River water is used under the decree concludes by summarizing the remaining purposes recognized under the decree with the phrase "and other beneficial purposes." This phrase is a short way of indicating that a number of beneficial uses, other than those expressly listed, are recognized under the decree. In itself, the phrase does not operate to modify the subsequent restriction imposed on determining the volume of water awarded to the Indians by measuring the acreage irrigated during the year.

The Truckee River decree bases the award of water rights for the Pyramid Lake Reservation on the premise that the water rights were reserved for the needs of the Indians on the reservation. The decree declares that by resaon of the withdrawal from the public domain by the Commissioner of the General Land Office of the lands now comprising the Pyramid Lake Reservation for the use and benefit of the Indians, a reasonable amount of the water of the Truckee River, which belongs to the United States under the cession of territory by Mexico in 1848 and which was the only water available for the irrigation of the lands, was reserved for the needs of the Indians. This is based on the ruling in *Winters* v. *United States*, 207 U.S. 564 (1908), that the establishment of an Indian reservation carries with it an implied reservation of the right to use such quantities of reservation water as may be needed for the irrigation of reservation lands and for domestic and livestock purposes.

The doctrine of reserved water rights is, we believe, based broadly upon the fact that water was necessary for the maintenance of a subsistence economy and the development of reservation resources for the support of the Indians for whom the reservation was established. In the two leading cases, *Winters* v. *United States, supra,* and *Arizona* v. *California*, 373 U.S. 546 (1963), the court was considering reservations in which agriculture was intended to be the primary means of support and the decisions held that water for irrigation of land susceptible of irrigation for agricultural purposes, and water for domestic and livestock purposes, was impliedly reserved. It follows, we believe, that where the resources of a fishery were intended as a means of subsistence and support in the establishment of an Indian reservation, the reservation of water necessary for the fishery would be recognized as an implied incident and appurtenance of the reserved land.

An important means of livelihood between 1870 and 1920 for the Indians on Pyramid Lake Reservation was the yield of fish from the lake and adjacent waters. There is evidence that income from this source for Indians of the Pyramid Lake Reservation amounted to approximately $10,000 annually in times past, and in addition, that fish were important directly as their chief source of food supply, S. Rep. No. 947, 81st Cong. 1st Sess., 4–5 (1949); Memorandum May 5, 1943, on *Pyramid Lake Indian Reservation, Nevada* by Acting Director of Irrigation, Indian Service.

In this connection it is noted that in November 1859, F. Dodge, agent for the Indians in Utah Territory which then included Nevada, wrote to the Commissioner of Indian Affairs suggesting that a tract in the northern portion of the valley of the Truckee River, *including Pyramid Lake*, and lands in the valley of Walker River be reserved for the Indians of his agency. Thereafter, on December 8, 1859, Pyramid Lake Reservation was established. In *United States of America* v. *Walker River Irrigation District*, 104 F. 2d 334, 338, 339 (9th Cir., 1939), the Court quoted from Dodge's request to the Commissioner that the lands be set aside. Dodge described the lands as isolated spots *embracing large fisheries*, surrounded by mountains and deserts, and indicated that the lands were the home of the Indians' choice. He stated that although only a small portion of the land was suited for agricultural purposes, it was believed that there would be a sufficiency for sustenance of the Indians, in view of the fish which they could obtain from Pyramid and Walker Lakes.

The fact that when the Pyramid Lake Indian Reservation was established the lands were considered adequate for the Indians in part by reason of the Pyramid Lake fishery, since a relatively small portion of the reserved land was suited for agriculture, made the fishery on Pyramid Lake Indian Reservation a substitute for or the partial equivalent of potential crop production from lands of other Indian reservations such as those involved in the *Winters* case which were less barren than much of the area of Pyramid Lake Reservation. Because the availability of fish from waters on Pyramid Lake Reservation was historically important as a means of livelihood and as a principal source of food supply for the Pyramid Lake Indians, the reason and necessity for reserving water for the Pyramid Lake fishery are identical with and as strong and compelling as for reserving irrigation water. Almost certainly, if, in the Truckee River adjudication, the Court's attention has been directed to the habits of the Indians and the physical characteristics of the Pyramid Lake Reservation mentioned here, the water necessary for maintaining the Pyramid Lake fishery would have been included in that which the Court held was reserved by implication on December 8, 1859, when the Pyramid Lake Indian Reservation was withdrawn from the public domain. This is so because the very establishment of the reservation presupposed the existence of the fishery.[3] In brief, all of Pyramid Lake was expressly reserved in 1859 as part of Pyramid Lake Reservation and Truckee River waters adjacent to and flowing into the Lake which were necessary for maintaining the fishery were within the reservation boundaries and reserved as a part of the reservation. In the *Winters* case, the Court held that the Government intended to deal fairly with the Fort Belknap Indians when it created that reservation and impliedly reserved the waters without which their arid lands would have been useless. *A fortiori* where, as here, the United States expressly reserved Pyramid Lake for the Indians with a view of providing a fishery within the reservation, it must have reserved a sufficient amount of water of the Truckee River flowing into the lake on the reservation to maintain the fishery. See *Arizona* v. *California*, 373 U.S. 546, 595–601 (1963).

Returning now to the question of what the provisions of Federal law are for changing the use to which reserved Indian water rights may be put, the matter was considered recently in the light of the proceedings, in *Arizona* v. *California*, *supra*. In a memorandum of February 1, 1964, to the Secretary by the Deputy Solicitor concerning reserved water rights for the Colorado River Reservation, we concluded that an attempt to limit or confine the use of reserved Indian water rights to the irrigation of lands is unwarranted. We believe that the discussion and conclusion in the memorandum of February 1 are applicable to water reserved for the irrigation of Pyramid Lake Reservation lands, though the court decree in this case, as well as the fact that the place of proposed use is at the lower end of the river and self-help measures are not physically possible, requires that the matter be handled differently than was indicated in the case of the Colorado River Reservation water rights. The memorandum of February 1 pointed out that reserved Indian water rights are part of reservation lands, and just as the Indians are not required to use their lands solely for agricultural purposes, there is no reason for restricting the use of their water rights to agricultural pursuits where the gains and benefits for the Indians call for the non-agricultural development of their water resources.

Accordingly, the Pyramid Lake Indians should be allowed to use irrigation water to which they are entitled under the *Orr* decree for restoration of the fishery because the fishery was a part of the reservation which would be valueless without water and the United States must be presumed to have reserved water for the fishery as it reserved irrigation water for lands. In addition, Federal law of Indian water rights, as developed by decisions of the Supreme Court, permits the use of reserved Indian water rights for non-agricultural purposes. We believe, therefore, that appropriate action should be taken to permit a change in the purpose and place of use of water decreed for agricultural use on Pyramid Lake Reservation and to permit other benefiical uses to be made including use for reestablishing the Pyramid Lake fishery. The Water Master administering the decree would then be bound to permit sufficient water to reach Pyramid Lake Reservation, with the same priority as irrigation water, to enable reestablishment of the fishery and to permit use for other purposes.

We would like to have your recommendation about procedure to be followed in this case.

Sincerely yours,

FRANK J. BARRY, *Solicitor.*

Enclosure. [omitted.]

Mr. Kiechel, you were there at that time, too. We are now about 7 years later.

Mr. KIECHEL. In 1964 the request was made and a response was made, as I recall—I don't have the particulars of that inquiry—that was with respect to the decreed rights under the existing decree which had been decreed for irrigation purposes; and the recommendation and request by the Interior Department was that that quantity of water be transferred or the use be changed to the propagation of fish and the increasing and stabilizing of the level of the lake. If we are talking about—I think we are talking about the same matter. If we are talking about circa 1964, it was our feeling in the Department of Justice, Mr. Chairman, that that was really too little, that we should seek something more for the Pyramid Lake and Pyramid Lake Indians than merely to translate a right that they had or had already received for irrigation into another use. Our view was that we should undertake litigation which had a much more radical and beneficial effect on the lake than would have been involved in that kind of a lawsuit.

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[3] In *United States* v. *Sturgeon*, 27 Federal Cases, No. 16413, 1357 (D. Nevada 1879), the Court remarked on the purpose of reserving Pyramid Lake for the Indians in case involving the Indians right to fish in the waters of the lake, and held: "The president has set apart the reservation for the use of the Pah Utes and other Indians residing thereon. He has done this by authority of law. *We know that the lake was included in the reservation, that it might be a fishing ground for the Indians.* The lines of the reservation have been drawn around it for the purpose of excluding white people from fishing there except by proper authority. It is plain that nothing of value to the Indians will be left of their reservation if all the whites who choose may resort there to fish. In my judgment, those who thus encroach on the reservation and fishing ground violate the order setting it apart for the use of the Indians, and consequently do so contrary to law." (Italics added.)

Senator KENNEDY. In the prepared statement you say: "If litigation is necessary to define or protect these rights," this is Pyramid Lake, "this litigation will be instituted and vigorously pursued." I mean, do you think litigation is necessary?

Mr. KIECHEL. You are speaking to a litigator, Mr. Chairman, and I don't say it is the answer to all problems but perhaps I value it as a——

Senator KENNEDY. I am not asking your philosophical view about litigation. I am asking this in relationship to this case. In the past 2 years there have been requests for litigation which have been made and here we have Mr. Kashiwa saying if litigation is necessary. Well, do you believe that it is? You are speaking for the Justice Department.

Mr. KIECHEL. I believe that it is a means of solving the problem on behalf of the Indian but I would like to say——

Senator KENNEDY. Pyramid Lake?

Mr. KIECHEL. Pyramid Lake. I would like to accompany my answer by no philosophy, but what I was undertaking to say was that this task force, as I understand it, will support a variety of alternative actions. It can support perhaps legislative proposals; it can support litigation. If it does have the information and it is the request that litigation be the means of solving the problem, we are certainly ready, willing, and able to bring such a suit and, yes, sir, I do say as a personal opinion that I think that is a solution to the Pyramid Lake problem.

Senator KENNEDY. You indicate litigation is desirable. Interior, too, April, 16, indicated that at the earliest time possible?

Mr. KICHEL. Yes, sir.

Senator KENNEDY. For litigation?

Mr. KIECHEL. Yes, sir.

Senator KENNEDY. And now you are beginning to suggest, at least to me, that that task force might come on up and talk about legislation?

Mr. KIECHEL. No; I say——

Senator KENNEDY. And then the rights of the Indians would be dependent upon the whim of Congress?

Mr. KIECHEL. I started to say, Mr. Chairman, that as a litigator, and a water rights litigator, I appreciate the fact it takes time to bring and win water rights cases. Now, if there is some more immediate help for Pyramid Lake as legislative amelioration, legislative solution, or indeed if it would be within the agreeability of the two States, the State of California and Nevada who have an interstate compact pending to make specific provisions for Pyramid Lake, that would probably be more immediate. But I do not change from my view that litigation is a means by which this problem could be addressed; it could be brought in a judicial forum and we would certainly be ready to press it, are ready to press it, with the utmost vigor as soon as we have the facts to do it.

Senator Kennedy. Well, do you support the compact?

Mr. Kiechel. The present compact?

Senator Kennedy. Yes.

Mr. Kiechel. No; I do not.

Senator Kennedy. The Justice Department does not support it?

Mr. Kiechel. No.

Senator Kennedy. What about Interior?

Mr. Loesch. No, sir; we do not in its present form.

Mr. Kiechel. That is the part of the question I was responding to. We have suggested that it could be renegotiated to endeavor to take care of this very important matter of the Pyramid Lake, but our position is that in its present form in making no such provision it is unacceptable.

CONFLICTS OF INTEREST IN INTERIOR

Senator Kennedy. Is the Justice Department troubled by the apparent conflict of interest in Interior, Bureau of Land Management, Bureau of Indian Affairs? Are you troubled by that as a lawyer and as a member of the Department of Justice?

Mr. Kiechel. Well, I am concerned that there is no impediment to our getting the cases that will preserve and protect the Indians.

Senator Kennedy. Do you believe there is an impediment?

Mr. Kiechel. I don't know, sir. That is something——

Senator Kennedy. You have given us all the response earlier about the importance of litigation and conversations, communication, and getting the facts.

Mr. Kiechel. I am speaking now as a representative of the Department of Justice, Mr. Chairman, and I——

Senator Kennedy. You are speaking also as the protector of Indian rights as well?

Mr. Kiechel. Indeed, sir.

Senator Kennedy. I mean, you are not distinguishing your responsibilities to the Department as separate from your responsibilities to justice for the American Indians or anyone else, are you?

Mr. Kiechel. Except that the only way in which I can apply that concern in a practical way is as a trial attorney in the Department of Justice.

Senator Kennedy. You are here as more than a trial attorney today. You came up here to speak for the Assistant Attorney General on these matters?

Mr. Kiechel. Yes, sir.

Senator Kennedy. So that is what I want to hear, whether you are concerned about it.

Mr. Kiechel. I am concerned about it; yes, sir.

Senator Kennedy. What are you concerned about, the apparent conflict?

Mr. KIECHEL. I am troubled, without knowing about the Department of the Interior's internal situation, I am concerned that there not be any impediment to the——

Senator KENNEDY. Do you think there is an impediment?

Mr. KIECHEL. I don't know, sir.

Senator KENNEDY. You are the skilled litigator.

Mr. KIECHEL. Thank you, sir.

Senator KENNEDY. And you have spoken eloquently, and I can understand why you are such a success in your world of litigation; but you also have looked beyond as a litigator to not just the material but also the background, as a skilled lawyer and litigator. You don't just take the information that is supplied; you use other kinds of tests in evaluating your information; you are constantly challenged by this, I am sure. I am interested in—as you view the information that comes, the material that is prepared, sent over by the Interior Department—whether you are not aware of the apparent conflicts and the real conflicts which exist between the Bureau of Land Management, Bureau of Reclamation, and the BIA?

Mr. KIECHEL. Well, I appreciate——

Senator KENNEDY. I mean, the President said it.

Mr. KIECHEL. I certainly do think that is the President's intent in his message.

Senator KENNEDY. Of course, it is the President's concern. Is it not also your concern?

Mr. KIECHEL. It is also my concern, yes, indeed.

Senator KENNEDY. You are also concerned about this conflict?

Mr. KIECHEL. I view and I have viewed from the Department of Justice the Department of the Interior; I have viewed its constituent bureaus, the Bureau of Reclamation, the Bureau of Indian Affairs, and I have observed that those bureaus pursue different functions, and I take it that is one of the reasons for the President's proposal of the independent Trust Counsel Authority, and we certainly are in support of that.

Senator KENNEDY. Why do you think he proposed an independent trust counsel?

Mr. KIECHEL. Well, because he wanted to remove any possibility of a conflict of interest; that is what the message said and it seems to me that is the purpose of the proposed legislation.

Senator KENNEDY. Don't you represent the different bureaus in the Interior Department, too?

Mr. KIECHEL. Yes, sir.

Senator KENNEDY. And you, in your study of the various bureaus in meeting your responsibilities as a litigator, understand full well the scope of those Bureaus within the Department of the Interior, and you are not struck by a conflict which is both real and apparent within the Interior Department, as a skilled litigator?

Mr. KIECHEL. As an outsider, I am not in a position——

Senator KENNEDY. As an insider, as an insider?

Mr. KIECHEL. Well, as an outsider to the Department of the Interior, I am not in a position to express an opinion on that, sir.

Senator KENNEDY. Has there been any real conflict of interest over Indian matters within the Justice Department?

Mr. KIECHEL. No, sir.

Senator Kennedy. You don't feel there has been?

Mr. Kiechel. No, sir.

PYRAMID LAKE

Senator Kennedy. Let me ask Mr. Loesch, is the Federal Government committed to saving Pyramid Lake and preserving it as a national asset, the only developable resource of the Pyramid Lake Tribe?

Mr. Loesch. I can't speak for the entire administration on that matter, Senator Kennedy. I can tell you that I am personally committed to that course.

Senator Kennedy. Why don't you think you could speak for the whole administration on that?

Mr. Loesch. Because I am not in a position to at this point to say. I can tell you this: that the administration has seen to it, primarily, if I do say so, through my office, that since I sat down in the chair in early—in 1969, there hasn't been one drop of water that wasn't already out, taken from the Pyramid Lake watershed, not one drop, and as long as I can continue to hold things in that way, until we are fully prepared to move forward, that will remain the situation.

Senator Kennedy. And are you prepared to use all the administrative resources which are available to the Department to assure that the lake is maintained and its fishery restored?

Mr. Loesch. I am; yes.

Incidentally, Senator, if I can make one observation, I want to say something else.

Senator Kennedy. Yes.

BIA–BLM CONFLICTS

Mr. Loesch. In a good part of the Indian community my name is mud for various reasons, but I want to say that there hasn't been any conflict of interest between the Indian Bureau and the Bureau of Land Management, which is also under my purview, since I have been here because every time there has been a dispute the Indians have won, as between those two Bureaus.

MOHAVE LAND CASE

Senator Kennedy. What about the *Mohave* case? Can you talk about that for a monent?

(Materials relevant to the *Mohave* case are contained in a subsequent volume of these hearings.)

Mr. Loesch. Sure; I can talk about that.

Senator Kennedy. The Bureau of Land Management transferred Indian land to California?

Mr. Loesch. We are right in the middle of that right now, and the decision of the examiner has—let me check just a minute—I have got the *Mohave* case right handy, if I can put my finger on it.

I have reference to the Mohave Hay and Wood Reserve matter in which the Bureau of Reclamation was accused of trying to give California the Hay and Wood Reserve.

Now, the Bureau of Reclamation was not involved in this matter at all. It was the Bureau of Land Management.

Senator Kennedy. Bureau of Land Management?

Mr. LOESCH. Right. When the determination was originally made that California was entitled to a portion of this Hay and Wood Reserve, the Department took immediate action and the request of the Fort Mohave Tribe to intervene was granted by me. The matter went de novo to a hearing examiner and the question there—now, I am really tresspassing on the solicitor's domain here—but the primary question was whether or not the land was located in California and whether it was or it was not swamp and overflow land on a particular date, which was, under the Swampland Act, definitive. Hasn't that been decided?

Mr. LOESCH. It is presently under review.

Senator KENNEDY. I have no question about that. The issue itself has been decided?

Mr. LOESCH. Yes, it has been decided.

Senator KENNEDY. By the trial examiner?

Mr. LOESCH. Yes, it was decided on August 3, 1971, entirely in favor of the Indians, and California has been refused the land. We have got—it is up before the Board of Land Appeals now for final decision at the departmental level and I suspect it will have a decision soon.

Senator KENNEDY. Are the Indians represented before the Board of Land Appeals?

Mr. LOESCH. Yes, they are.

Senator KENNEDY. Who represents them?

Mr. LOESCH. Mr. Ray Simpson.

Senator KENNEDY. Is he employed by the Justice Department?

Mr. LOESCH. He was here this morning. Yes, heis here.

Senator KENNEDY. Is he employed by the Justice Department?

Mr. LOESCH. No, sir; he is employed by the tribe.

JUSTICE PARTICIPATION IN ADMINISTRATIVE PROCEEDINGS

Senator KENNEDY. Well, aren't you—where is the Justice Department? Aren't you fellows trying to represent the Indians after you get a trial examiner to rule that the land really belonged to them and then they have to resort to a private attorney, as gifted and as talented as he may be?

Mr. KIECHEL. Not in an administrative proceeding, Mr. Chairman.

Senator KENNEDY. Pardon?

Mr. KIECHEL. We don't participate in administrative proceedings. The Attorney General's function by statute is with respect to litigation.

Mr. KIECHEL. We don't participate in administrative proceedings. The Attorney General's function by statute is with respect to litigation.

Senator KENNEDY. The Bureau of Land Management evidently wanted to give some land away to California; the tribes complained; and the trial examiner found in favor of the tribes. It was apparently a mistake of the Bureau of Land Management and the tribe, just to protect its rights, had to undergo all kinds of expenses, is that correct? That is the way I see it. Am I wrong? Have I missed some kind of nicety?

Mr. KIECHEL. Well, sir, with respect to this administrative proceeding which—if I understand Secretary Loesch's description—is presently pending in the Department of the Interior; we have not been asked to represent anyone.

Senator KENNEDY. Yes. Well, if you were asked——

Mr. KIECHEL. I am not familiar with this action and I am not sure if we were asked whether it would be within the statutory authority for the Department of Justice to in any way interpose itself in the administrative proceeding.

Senator KENNEDY. You don't think that you have the authority?

Mr. KIECHEL. I don't know, sir. I am not familiar with that proceeding. I couldn't say.

Senator KENNEDY. Has it ever come up? Do you intervene in any administrative proceedings?

Mr. KIECHEL. No; the general rule, to which there are undoubtedly exceptions, is that the statutory function of the Department and the Attorney General is to represent the United States and its wards' interests in court. It is not customary for us to function or to participate in administrative hearings.

Senator KENNEDY. Does the Justice Department Antitrust Division intervene, say, in administrative proceedings of the Federal Communications Commission?

Mr. KIECHEL. You have the advantage of me, Senator.

Senator KENNEDY. I understand they do.

Mr. KIECHEL. I think there is a function which is special to their activity under the antitrust law.

Senator KENNEDY. So they can get on into administrative procedures if it has to do with antitrust in the FCC, but you can't in terms of the Indians?

Mr. KIECHEL. But the statutes are different, I suggest.

Senator KENNEDY. Are you concerned where you want us to change those statutes?

Mr. KIECHEL. I am not familiar with the administrative procedures in the Department of the Interior involving the Fort Mohave Reservation.

Senator KENNEDY. I am not asking you about that particular case; you heard the description on this particular thing. There are other examples where the Justice Department intervenes in these agency considerations; but they don't in terms of Indians?

Mr. KIECHEL. I have a great deal of trouble responding to your suggestion that the Department should undertake to have amendatory legislation whereby it would extend its advocacy from the courts of law where it is presently working, into administrative proceedings; I think we would have to study the individual situation and the individual proceedings before we could make an informed judgment and express an opinion, Mr. Chairman.

Senator KENNEDY. Gentlemen, this is, I guess, about our third vote. I have some specific questions in specific areas. I wanted to go on in terms of the Eagle River case and a few others. I am glad to do what you wish. I had not intended—I thought we could end it this morning, but I don't think we can.

I am wondering whether we could come back at half past 2? I don't think it will take a great deal of time. We will try to sharpen a few issues.

Mr. KIECHEL. We would certainly be willing to stay with you, Senator, and it would be to our convenience if we could proceed without any greater interval than is necessary for your floor duties, if that is agreeable.

Senator KENNEDY. We will recess.

(Whereupon, at 1:20 p.m., the hearing was adjourned, to reconvene at 2:30 p.m. this date.)

AFTERNOON SESSION

2:45 p.m.

Senator KENNEDY. The subcommittee will come to order.

Again, I appreciate your patience. I was meeting with the Secretary of HEW about one of the administration's programs in the area of health. I appreciate your patience.

I just have a few areas to cover but they are important. I want to explore them with you, and I am going to ask for some more detailed responses in certain cases, and I hope you will not be delayed too long.

Mr. Loesch, we explored earlier with the Justice Department and gave them an opportunity to express their views on whether there are any conflicts of interest within the Interior Department. I think it only fair that you get equal time to give your observations as to whe her there are any conflicts of interest in the Justice Department.

CONFLICTS OF INTEREST IN JUSTICE

Mr. LOESCH. Well, thank you, Mr. Chairman.

I generally agree with Mr. Kiechel's statement that it has acted on the basis of recommendations by the Department of the Interior, and I know of no real conflict that we have had as a department with the Justice Department in this area.

Now, occasionally, perhaps you are aware that the *Stevens* case, the tax case, which had great implications in the Indian community, was decided yesterday by the Ninth Circuit Court of Appeals, the Court of Appeals for the Ninth Circuit, in favor of the Indian position. In that case I believe that the Justice Department was representing the Treasury, and the Indian taxpayer had private counsel, but I cannot call this really a conflict, I do not think. At any rate the Indian won in the court of appeals.

Within the Department, I would certainly have to admit, based on history and a look at past actions, many of them very old, there have been conflicts of interest within the Secretary's purview, between the interests of the Indians, a tribe or perhaps individuals, and the broad public responsibility of various bureaus.

Senator KENNEDY. You have maintained over a period of time, I think to your credit, that there are some inherent kinds of conflicts which existed in your Department.

Mr. LOESCH. Yes, I think there are myself. I think this has grown up over the years because of a lack of departmentwide understanding of the true boundaries or limits of the trust responsibility. I have a feeling, this is just a feeling, that on a Department basis in the past, especially during the years of greatest economic developmental thrust across the country, that the Department, as a whole, frequently did not fully understand and respect the trust responsiblity that it had. Now I may be wrong on this, but that is just the way it looks to me from reading case studies and histories and so forth in the Indian business.

However, Senator, he should make the point, I believe, that very many times in the past, and this can be documented, the tribal authorities have enthusiastically embraced a project, perhaps one, for instance, which the Bureau of Reclamation might be engaged in, and it has not been until long after the completion of a project that the tribe has then decided that it gave up something it should not have, and has claimed invasion of its rights. But, to finish the thought, that does not necessarily, of course, mean that the action taken at the time was either right or wrong.

Senator KENNEDY. If you recognize that there are these inherent conflicts—the President did—On which you commented today, and the Justice Department is dependent upon your Department for information, is that not going to suggest that those conflicts which are evident in your Department are going to carry on over to the Justice Department?

Mr. LOESCH. Yes, I think so. I can readily appreciate that there may have been occasions in the past in which the Interior Department failed to request action by the Justice Department because of the interest of some bureau other than the Bureau of Indian Affairs in regard to a particular case. Now, do not ask me to pinpoint that because I do not have in mind a particular instance, but I can readily appreciate that this could have occurred.

Senator KENNEDY. Mr. Kiechel, I take it that you cannot think of any instance in which the Justice Department's position in a claims case influenced the position you might have taken in another case where you were called upon to protect Indian rights.

Mr. KIECHEL. The answer is, no, I cannot think of any such instance, Mr. Chairman.

ESCONDIDO WATER CASE

Senator KENNEDY. In the Escondido water case, let me quote the District Judge's opinion:

> The United States Government, including the Department of the Interior and the Department of Justice, has been aware of complaints and problems of the Indians along the San Luis Rey and it appears that at least since 1925 said Department has been considering what action, if any, should be taken in regard to water and other property rights of the Indians along the San Luis Rey River.
>
> "The Department of Justice and the Department of the Interior feel they exercised their discretion to decide what action, if any, should be taken. Said discretion should be exercised and it is within the power of the court to order an official of the Executive Department of the Federal Government to exercise their discretion when they fail to do so.
>
> Justice replied to the court's order by saying that the position Justice had adopted in the Docket 80–A before the Indian Claims Commission virtually precludes it from entering the case or filing in behalf of the Indian tribes.

Do you see any conflict of interest in that case?

Mr. KIECHEL. The fact is, of course, Mr. Chairman, that the tribes were represented by, as I recall, the California Indian Legal Services, and the resistance that the Department made to their demand or motion that the Department of Justice take over and pursue the judicial action that they had initiated was mainly because of the legal proposition which, I submit, is a sound one, that the court cannot enjoin the Attorney General to exercise his discretion. The fact further is that with respect to that litigation we are still a party. We are attempting to exercise our leadership and our authority toward the end of working out an arrangement and a settlement which is to the benefit of the Indians.

Senator KENNEDY. Are you familiar with this case?

Mr. KIECHEL. Yes, sir.

Senator KENNEDY. Well, is it not true that the Justice Department said that they could not take a position in terms of the Indians because they were already involved in the claims case and this would be a conflict of interest?

Mr. KIECHEL. We said that in response to a motion to, in effect, mandamus the Attorney General to initiate lawsuits, which is a pretty fundamental thing from the Attorney General and Department of Justice point of view. But we, I think I can say that we, declined to adopt or assume the lawsuit which had been instituted by the tribe, represented by the Indian legal services, because we thought their position was wrong and not in their best interest.

(The response of the Attorney General and Secretary of the Interior to the court's order follows:)

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

(Civil No. 69-217-K)

RINCON BAND OF MISSION INDIANS, ET AL., Plaintiffs

v.

ESCONDIDO MUTUAL WATER COMPANY, ET AL., Defendants

RESPONSE OF ATTORNEY GENERAL AND SECRETARY OF THE INTERIOR TO COURT ORDER DATED NOVEMBER 26, 1969

By its order dated November 26, 1969, this Court directed that the defendants John N. Mitchell and Walter J. Hickel, within 45 days from October 29, 1969, must exercise their discretion in regard to this action and must either prosecute this action, bring a separate action, or clearly indicate in writing to this court why the best interests of the plaintiffs' demand that no such action be prosecuted. Without waiving their position that their decision respecting the matter in question is entirely at their discretion and is not in any way subject to the mandamus jurisdiction of this Court, the named defendants make the following response to the said order of November 26, 1969.

I

Since 1950 there has been pending before the Indian Claims Commission a petition in which the plaintiffs here inter alia, assert against the United States claims for damage arising out of the same factual circumstances as those on which their claims in this action are predicted. As required by statute the Department of Justice has defended those claims against the United States and the matter has been fully tried on the issue of liability and is now pending for decision by the Commission. The proceeding before the Indian Claims Commission is there, and hereinafter, designated as Docket 80-A.

In its defense in Docket 80-A the Department of Justice has among other things, contended, and continues to contend, that the plaintiffs have suffered no damages, at least insofar as their alleged water rights are concerned, as a result of the activities of the Escondido Mutual Water Company and that the United States is therefore not liable to the petitioners in that proceeding. * * *

The positions which the plaintiffs here desire that the named federal officer defendants take their behalf, either through participation in this action or through the initiation of a separate action, are not consistent with the positions already taken and the evidence, as the Department of Justice sees it, in Docket 80-A. The Attorney General cannot, consistently with his obligation to defend the United States in the latter proceeding, abandon those positions or assert the insufficiency or invalidity of the evidence on which these positions are based. Accordingly, were the Attorney General to decide either to pursue this action or to initiate another action in behalf of the plaintiffs it would necessarily have to be on a basis which would be compatible with the record made in Docket 80-A, and that obviously would not be satisfactory to the plaintiffs.

For example, the contention of plaintiffs, up to this point in this action, is that the United States Government since 1925 has been aware of problems of the Indians along the San Luis Rey River and that no action has been taken in regard to their water and other property rights. The record, as reflected by the United States Requested Findings of Fact in the Indian Claims Commission proceedings is to the contrary. On the basis of the evidence adduced in that proceeding, those Requested Findings reflect that the United States has taken numerous actions to assist the plaintiffs and the Indians along the San Luis Rey River to develop the uses of irrigation water on their reservations.

It is the judgment of the named defendants that the interests of the plaintiffs will in this instance be better served if the United States permits them to proceed, without its intervention, in the pursuit of their claims against the Water Company and the City through independent counsel. In this way, any risk that all contentions in support of the plaintiffs' claims would not be asserted to their full extent because of possible effect on the Docket 80–A proceeding would be avoided. Problems in management of the litigation which would be present were the United States to enter the instant case or file a separate case would also be avoided. Were the United States to come into this case one of the first questions would be whether the plaintiffs, through independent counsel, would be permitted to take actions contrary to decisions by the Department of Justice. It is our position that if the United States were in the case the Department would have to exercise complete control over the conduct of the case in behalf of the plaintiffs. Although other counsel might continue in the case, they would not be permitted to take actions contrary to or inconsistent with those taken by the Department of Justice.

With respect to the filing of an independent action there is first the question of what effect this would have upon this lawsuit. There is strong authority to the effect that the filing of an action by the United States for the protection of restricted Indian property rights preempts the field and the Indians would not be permitted to pursue an action on their own behalf with respect to those same property rights. * * *

In several cases where the United States has brought actions to protect Indian water rights, the Indians have attempted to intervene on their own behalf. The courts have not permitted them to do so. See for example, *Arizona* v. *California, et al.*, 368 U.S. 917; *United States* v. *Alpine Land and Cattle Co.*, No 24156 in the Court of Appeals for the Ninth Circuit. * * * It is the judgment of the named defendants that if the plaintiffs and their attorneys are firmly convinced that the positions they assert in this matter are correct, it is not in the plaintiffs' interest that the United States take a course of action which might thwart those contentions. Even if the Court should conclude that the filing of an independent action by the United States on behalf of the Indians in this matter did not preempt the field and the two lawsuits were permitted to proceed simultaneously, the advocation of different positions in behalf of the Indians in the two cases would tend to prejudice the Indians' interests in both cases. For these reasons it is the decision of the named defendants that the United States should not at this time either intervene in behalf of plaintiffs in this case or file a separate action.

II

Notwithstanding the decision stated above, the Departments of Justice and of the Interior continue to be desirous of lending their good offices in any reasonable way to the negotiation of a settlement of the claims of the plaintiff Indian bands and thereby to avoid the protracted litigation which the prosecution of this case to final judgment would entail. The manner in which such assistance might be given remains to be determined, and before such determination can be made it is necessary that the status of plaintiffs' attorneys in this case with reference to Docket 80–A be clarified.

Both the Rincon and La Jolla bands have adopted resolutions in which the terms of settlement which they propose are set forth. Each resolution is to the effect that the band authorizes its attorneys in this action to negotiate on the basis of a "package settlement" of (a) the band's Docket 80–A claim and (b) the bands' claims against Escondido Mutual Water and the City of Escondido. In discussions heretofore had, the said attorneys for the two bands in this action have been adamant in their insistence that Docket 80–A must be settled contemporaneously with any settlement of their claims against the Water Company and the City.

But as has heretofore been pointed out to the Court, plaintiff's attorneys in this action are not authorized to represent plaintiffs in their Docket 80–A claims. On the contrary, plaintiffs are party to a contract with other attorneys providing for their representation in Docket 80–A. * * *

Obviously, the matter of the Rincon and La Jolla representation in Docket 80-A must be resolved before there can be any meaningful consideration of settlement of that case. It is equally clear that so long as the bands adhere to their present position that there must be a package settlement of their claims in Docket 80-A and in this case, it would be pointless to attempt to initiate serious settlement negotiations so far as this case is concerned.

If the plaintiff bands should decide to proceed in an effort to negotiate a settlement of their claims against Escondido Mutual Water Company and the City of Escondido, representatives of the Departments of Justice and of the Interior will undertake to arrive at an understanding with counsel for the plaintiffs here as to the role they can best play in such negotiations and, if satisfactory understanding can be reached, to proceed accordingly. If the bands adhere to their insistence on a package settlement of the two cases, any effort to reach a similar understanding will, of course, have to depend upon there first being a resolution of the question of representation in Docket 80-A.

Respectfully submitted.

(S) Shiro Kashiwa,
Assistant Attorney General.
(S) Harry D. Steward,
United States Attorney.
(S) Raymond Zvetina,
Assistant United States Attorney.
(S) Donald W. Redd,
Attorney, Department of Justice.

TLINGIT AND HAIDA TRESPASS

Senator Kennedy. Well, what about the case involving a request by the Tlingit and Haida Indians of Alaska to the Solicitor of the Interior to take action against a builder for trespass over Indian lands. This was in January 1969:

> In April 1969, a decision was reached to institute suit, seeking money damages and injunctive relief. After suit was filed, the BLM was asked to "investigate" the facts of the situation. This investigation revealed that the road had indeed been constructed in August 1968 and a report described in some detail the factual results of the investigation. No action was taken to prosecute the claim. In the view of the Indians' Washington counsel this was because the theory of recovery was resisted by the Public Lands Division of the Solicitor's Office. Ultimately the Action was dismissed by the United States.

That is from a quote from the "Study of Administrative Conflicts of Interest in the Protection of Indian Natural Resources," printed by this subcommittee.

Are you telling us there was not any conflict of interest in that case?

Mr. Kiechel. I am not familiar with that case. Do I understand the quotation you read, that that was referred from Interior Department to the Department of Justice?

Senator Kennedy. That is right. Could you give us a written comment on it?

(The observations of the Department of Justice on the Tlingit-Haida case referred to follow:)

Office of the Deputy Attorney General,
Washington, D.C.

Hon. Edward M. Kennedy,
Chairman, Subcommittee on Administrative Practice and Procedure, Committee on the Judiciary, U.S. Senate, Washington, D.C.

Dear Mr. Chairman: At the hearings before the Subcommittee on November 30, 1971, you quoted from a paper entitled "A Study of Administrative Conflicts of Interest and the Protection of Indian Natural Resources" respecting a request by the Tlingit and Haida Indians to the Interior Department for action against an alleged trespasser upon lands claimed by the Indians and asked for the comments of this Department on the matter.

Upon examination of Departmental files, we find that by letter dated March 21, 1969, the Interior Department did request appropriate action to prevent the continuance of a trespass by the firm of Moore & Roeser, Inc., of Haines, Alaska, upon lands within the area denominated Area 6 by the Court of Claims in the case entitled *Tlingit and Haida Indians of Alaska* v. *United States.* We were informed that the trespass was in the form of building a road on lands over which the firm had requested a right-of-way permit from the Bureau of Land Management and that no permit had been issued. The request indicated that although the question of validity of the Indians' claim to the particular lands had not been resolved in the Interior Department, this question was irrelevant since the firm had no permit from either the Bureau of Land Management, the Bureau of Indian Affairs, or the Tribe.

By letter dated April 10, 1969, further material pertaining to this request was received, including a letter which we were advised "could be the basis of a claim that Moore and Roeser is merely building an access road for local homesteaders." This letter further stated: "It is our understanding, however, that the company is constructing the road to facilitate future logging operations for which no permit has been given."

Although the material received in support of the request was quite sketchy and did not include evidentiary material which would be needed to prove a case, we did, as we sometimes do in situations where an apparent necessity for prompt action overrides the desirability of having in hand the material needed to permit adequate evaluation of a request for litigation, request the United States Attorney for the District of Alaska to proceed with suit against Moore & Roeser, Inc., to enjoin their alleged continuing trespass and to recover money damages for any damage which had been done, On May 16, 1969, the United States Attorney filed suit as requested. Subsequently, he advised us that he had proceeded in order to get the action started, but with the expectation that he might have to amend his complaint after obtaining from the Interior Department the results of its further investigation which he understood was being made. At that time, the United States Attorney further advised that when the marshal made service of summons upon Charles L. Roeser for Moore & Roeser, Inc., that person stated he had no interest in Moore and Roeser and further that a different company than Moore and Roeser was the one apparently involved in the activities complained of. He stated that he was expecting momentarily Interior's further report respecting the problem and that he had been advised that the action may have been brought prematurely "and that there may not be any illegal trespass at all."

We advised the Interior Department of this report from the U.S. attorney and requested further information. Several months later, by letter dated January 12, 1970, that Department advised us that an updated field report in support of the action had been requested and that as soon as it was received we would be given comments on the report we had from the U.S. attorney. Subsequently, we were again advised by the U.S. attorney that he continued to await the further report from the Interior Department and that it was entirely impossible for him to proceed further without a great deal of additional information. He further stated at that time that the materials he had reviewed in the regional solicitor's office seemed to indicate that there was no basis for a lawsuit. He accordingly stated that it was his intention to dismiss the complaint he had filed, and that it could be reinstituted if it should be determined that the matter be pursued.

Again we sought the recommendation of the Interior Department and on February 12, 1970, we were orally requested to ask the U.S. attorney not to take action to dismiss the complaint for another three weeks while Interior decided what recommendation should be made. Another letter from the U.S. attorney dated March 26, 1970, requesting evidence, was referred to Interior on March 31, 1970, and while we waited for a full factual report and evidence to support the requested action, the court by order dated June 3, 1970, dismissed the pending case for lack of prosecution. It is our understanding that the dismissal was without prejudice and that, whenever the facts needed to proceed are furnished to us and the evidence is available to support a claim, the matter can be reinstituted.

As requested in a note addressed by Mr. Susman to Mr. Kiechel of this Department, there are enclosed copies of (1) letter dated November 2, 1964, from Interior to Justice respecting the Orr Water Ditch Co. decree and (2) letter dated May 8, 1969, from Justice to Interior in reply to a letter dated April 16, 1969, from Solicitor Melich requesting certain action with respect to Pyramid Lake. The other additional matters requested by the subcommittee are being prepared and will be forwarded as soon as available.

Sincerely,

Richard G. Kleindienst,
Deputy Attorney General.

(The following correspondence to subcommittee counsel responds to the Justice Department's observations on the Tlingit-Haida trespass:)

WEISSBRODT & WEISSBRODT,
Washington, D.C., February 15, 1972.

THOMAS SUSMAN, Esq.,
Committee on the Judiciary, U.S. Senate,
Washington, D.C.

DEAR TOM: Thank you for sending us the copy of the Deputy A. G.'s letter of February 4 to Senator Kennedy containing Justice's apologia for its handling of the Moore and Roeser trespass on Area 6.

Since the aboriginal title of the Tlingit & Haida Indians to the area was extinguished by the Alaska Native Claims Settlement Act of December 18, 1971, the issue is no longer a burning one.

For the record, however, Kleindienst's explanation of the conduct of the Department of Justice is fatuous. The proposition that there was insufficient evidence to go forward with the case just won't wash.

Enclosed are copies of letters from Lefty to the Deputy Solicitor, Interior, dated March 6, 1970, and from John Borbridge to Leonard Garment, dated June 29, 1970, which discuss this proposition and show its disingenuousness.

No one has ever suggested that the road wasn't built or that the trees weren't cut.

The real reason the case was dropped was that Interior refused to acknowledge, let alone to contend in court, that the outstanding aboriginal title of the Tlingit & Haida Indians invested them with any enforceable rights in the land.

In addition to putting us on the list to receive copies of the hearings of the subcommittee, I would appreciate your sending us copies of the correspondence relative to Pyramid Lake referred to on page 4 of Kleindienst's letter of February 4 to Senator Kennedy.

Thanks again.

Sincerely yours,

RICHMOND F. ALLAN.

WEISSBRODT & WEISSBRODT,
Washington, D.C., March 6, 1970.

RAYMOND COULTER, Esq.,
Deputy Solicitor,
U.S. Department of the Interior,
Washington, D.C.

DEAR MR. COULTER: This is in reply to your letter of February 26, 1970, in which you inform us that the United States Attorney has advised your Department that he does not have sufficient information to continue prosecution of the case entitled *United States* v. *Moore and Roeser, Inc.*, Civil No. A–62–69, in the United States District Court for the District of Alaska, and intends to request that it be dismissed.

We respectfully say that we are at a loss to understand the statement that the United States Attorney does not have sufficient information to continue prosecution and the suggestion that if we have "factual information" we should submit a complete report for your consideration and possible submission to the United States Attorney.

In our letter of January 28, 1969, to the Solicitor, we stated that we were informed that prior to May 21, 1968, Moore & Roeser, Inc. made application to the Bureau of Land Management for a permit to build a road and cut and sell timber from the right-of-way on lands in the vicinity of Chikoot Lake which it has been judicially determined are the aboriginal property of the Tlingit and Haida Indians; that the Bureau of Land Management advise Moore and Roeser, Inc. that such a permit could not be granted without the consent of the Indians; that the Central Council of the Tlingit and Haida, after carefully considering the matter, decided against consenting to the grant of the permit; and that, notwithstanding it was refused a permit, Moore & Roeser, Inc. entered the lands and commenced building a road and cutting timber thereon.

In our letter of November 5, 1969, to the Solicitor, we stated that we were advised that Moore and Roeser, Inc. was continuing its operations on the lands, regardless that the United States had filed suit against it for an injunction and damages on May 16, 1969.

John Borbridge, Jr., President of the Central Council, tells us that he wrote the Secretary of the Interior last month to advise that he is informed that Moore and Roeser, Inc. is still continuing its operations on the lands.

Replying on December 8, 1969, to our letter of November 5 (in which we said that we would welcome an opportunity to discuss the matter with you), you stated that the Department of Justice had requested some additional information which your Department was about to supply, and that you did not believe a meeting was needed.

While we are not privy to the request for additional information made by the Department of Justice, it seems clear that the only material information required to prosecute the suit is the fact (and we have been repeatedly informed that it is a fact) that Moore and Roeser, Inc. entered upon the lands in question without semblence of right and built a road and cut timber. If it did, it is guilty of trespass and is liable for damages for injuries done the lands. If it did not, then, of course, it is not chargeable with any wrong doing. We have assumed that the fact of entry had been established and confirmed to the satisfaction of the United States Attorney before the action was filed last May.

As stated, we have not been privy to communications between Interior and Justice relating to this matter, and are completely in the dark concerning the nature of the additional information requested by the latter, and the nature of the information now wanting that the U.S. Attorney believes essential to prosecution of the suit.

We are asking the Central Council to try to reconfirm that Moore and Roeser, Inc. did in fact enter upon lands in question, and to ascertain the nature, extent and duration of its operations thereon. If you already have this information and want other, please let us know, for, as we said, we do not understand what other information is material.

In the meantime, may we respectfully urge that you take such steps as are necessary to persuade the Department of Justice to keep the action alive.

Again, we would welcome an opportunity to discuss this matter with you; particularly, to find out what additional information the United States Attorney feels is necessary to prosecute the suit successfully.

Sincerely,

I. S. WEISSBRODT.

JUNE 29, 1970.

Mr. LEONARD GARMENT,
Special Consultant to the President,
The White House,
Washington, D.C.

DEAR MR. GARMENT: When you extended the invitation to the Indian leaders who met with the Vice President and you last November to get in touch with you when they have problems that are not solveable in ordinary ways, I did not realize that I would have occasion to call on you so soon.

In a case prosecuted by the Tlingit and Haida Indians of Alaska in the Court of Claims under a special jurisdictional act it was determined that we still hold aboriginal title to approximately 2.6 million acres of land in the northern part of Southeast Alaska. The decisions of the Court of Claims in the case are reported at 147 Ct. Cl. 315 (1959) and at 182 Ct. Cl. 130 (1968).

In early 1968, a firm called Moore & Roeser, Inc. applied to the Alaska office of the Bureau of Land Management for permission to construct a road in part over the lands which the Court of Claims concluded were still subject to our Indian title. The B.L.M. informed the applicant that it would be necessary to secure the permission of the Tlingit and Haida Indians.

After thoroughly considering the matter, the Executive Committee of the Council of the Tlingit and Haida Indians adopted a resolution refusing to grant permission. The Executive Committee concluded that the proposed road would open access to the Chilkoot Lake area and be detrimental to the interests of the Indians who live in and around the Native village of Klukwan and use the area in traditional ways.

Notwithstanding that it received no permission from the B.L.M. to do so, Moore & Roeser, Inc. entered upon the lands and commenced construction of the road and cutting timber along the route. I consulted the United States Attorney and was advised that the Department of Justice would take action on our behalf if requested to do so by the Department of the Interior. I then got in touch with our attorneys and instructed them to call the trespass to the attention of the

Department of the Interior and ask that Department to request the Department of Justice to take appropriate action. By letter of April 21, 1969, the United States Attorney informed me that he had been authorized to commence an action to stop the trespass and to recover damages. Suit was filed on May 16, 1969.

Being informed in September, 1969, that Moore & Roeser, Inc. was continuing its activities on the lands, I asked our attorneys to find out why the suit had not progressed. They were told that Justice had requested additional information from Interior which the latter was in the process of gathering.

I will not recap blow by blow all that has happened since. Enclosed are copies of the more significant letters and documents from my file on the case.

Under date of June 15, 1970, our attorneys received a letter from the Solicitor of the Department of the Interior informing that the suit had been dismissed on June 3, 1970. A copy of this letter is enclosed.

The explanation given for the dismissal is insufficient evidence. I cannot help but feel that this explanation is extremely disingenuous in view of the report of the investigation made by the B.L.M. on May 7–8–9, 1969, a copy of which is among the papers enclosed. The facts that the lands were entered by Moore & Roeser, Inc., the road construction and trees cut along the route are established beyond dispute.

Mr. I. S. Weissbrodt, one of our attorneys, advised me based upon a meeting he had with lawyers of the Public Lands Division of the Solicitors' office (following his letter of March 6, 1970, to the Deputy Solicitor), that it was his opinion that the hangup was not lack of evidence but the reluctance of the Department of the Interior to sponsor any action which would constitute an acknowledgement that the Tlingit and Haida Indians have enforceable interests in the lands. In sum, regardless of the holding of the Court of Claims, the Department refuses to recognize that the lands are anything other than garden variety public domain.

I think it is fair to say that it has been the experience of Indians generally that when a question involving their rights is referred to the Public Lands Division of the Solicitors' office it is generally predictable that the outcome will not be favorable to the Indian position.

I would greatly appreciate your having one of your people review the enclosures. I am convinced that any independent reviewer will quickly conclude that the reason the suit was dismissed was not because of any want of evidence but because Interior determined—in a rather clear conflict in interest situation—that it did not want to acknowledge that the Tlingit and Haida Indians have any legally enforceable interests in the lands.

Your help is sincerely appreciated.

Very truly yours,

JOHN BORBRIDGE, Jr.

LIST OF ENCLOSURES

1. Letter, June 15, 1970, from Solicitor to I. S. Weissbrodt
2. Letter, March 26, 1970, from U.S. Attorney, Alaska, to Dept. of Justice
3. Letter, March 6, 1970, from I. S. Weissbrodt to Deputy Solicitor
4. Letter, March 5, 1970, from Deputy Solicitor to John Borbridge, Jr.
5. Letter, Feb. 26, 1970, from Deputy Solicitor to I. S. Weissbrodt
6. Letter, Feb. 20, 1970, from John Borbridge, Jr. to Secretary of the Interior
7. Letter, Dec. 11, 1969, from I. S. Weissbrodt to Deputy Solicitor
8. Letter, Dec. 8, 1969, from Deputy Solicitor to I. S. Weissbrodt
9. Letter, Nov. 5, 1969, from I. S. Weissbrodt to Solicitor
10. Memo, June 19, 1969, from State Director, BLM, to Director, BLM
11. Memo, May 19, 1969, from Natural Resource Specialist, BLM, Juneau to District Manager, BLM, Anchorage
12. Report of Investigation, May 7–8–9, 1969, prepared by H. Douglas Gray, BLM
13. Letter, April 21, 1969, from U.S. Attorney, Alaska, to John Borbridge, Jr.
14. Memo, Feb. 26, 1969, from Area Director, BIA, to Field Solicitor
15. Memo, Feb. 25, 1969, from State Director, Alaska, to Director, BLM
16. Memo, Feb. 20, 1969, from Area Director, BIA, to Commissioner of Indian Affairs
17. Letter, Feb. 6, 1969, from Associate Solicitor to I. S. Weissbrodt
18. Letter, Jan. 28, 1969, from I. S. Weissbrodt to Solicitor
19. Letter, Dec. 31, 1968, from U.S. Attorney, Alaska, to John Borbridge, Jr.
20. Letter, May 21, 1968, from Manager District Office, BLM, to Moore & Roeser, Inc.
21. Letter, Nov. 11, 1968, from John Borbridge, Jr. to Moore & Roeser, Inc.

Senator KENNEDY. Mr. Glen Wilkinson, who is a well-known lawyer in Washington, testified before the Senate Interior Committee last week that a case recommended by Interior a while ago relating to the Klamath Tribe was dropped by the Justice Department. Let me quote Mr. Wilkinson's statement filed November 22, 1971, before the Interior Committee:

> The Department of Justice at that time came face to face with cases where it was on the other side. Tribes were suing the U.S. for loss of fish and fishing rights arising from construction of dams by the United States. Anyone can appreciate the inconsistent position forced on the Department of Justice if it pursued the COPCO case. It would be asserting the principle of a measure of damages in that case contrary to its assertion in other cases. Thus, the trust obligation owed to the Klamath Tribe was overcome by the claim of self-interest.

Mr. KIECHEL. Mr. France is familiar with that case, and I will ask him to respond to that.

Mr. FRANCE. Mr. Chairman——

Senator KENNEDY. Yes.

Mr. FRANCE. This case was first referred to the Department of Justice in 1942, with the request that the Department of Justice bring suit at that time to put fish ladders into dams constructed across the Klamath River by the California-Oregon Power Co. It was alleged that the dams without fish ladders had interfered with the migration of fish upstream.

After consideration of this for several years, it was determined this was not feasible, and the request was changed to a request that an action be brought to collect damages.

Senator KENNEDY. You mean they could not put the ladders in?

Mr. FRANCE. A determination was made that that was not feasible. I do not know the basis of the determination because at that time I was not handling the case. The case was assigned to me in 1956, 14 years after the first request. At that time, I examined the available information and found we did not have evidence to show that the fish ever did migrate up the Klamath River to the Klamath Reservation. We had no evidence whatever to show what, if any, damage had been suffered by the Klamath Indians.

Senator KENNEDY. You mean you could not find or you could not detect whether there had been fish going up that river; you could not get that evidence?

Mr. FRANCE. That is right, sir.

Senator KENNEDY. Did you try?

Mr. FRANCE. I beg your pardon?

Senator KENNEDY. Did you try to get some evidence as to that effect?

Mr. FRANCE. Yes.

Senator KENNEDY. Did they go out and talk with any of the people, families, for example, involved——

Mr. FRANCE. Justice did not.

Senator KENNEDY (continuing). In the fishing. Who did? Who gathered that information?

Mr. FRANCE. In 1956 the Department of Justice addressed two letters, one to counsel for the Indians, one to the Department of the Interior pointing out to them we did not have this evidence, that this evidence was essential if we were to bring suit, and we asked either one of them if they had such evidence to furnish it to the Department of Justice. Neither ever replied to the response and after about 3 more years the file was closed.

Senator Kennedy. You could not tell us why that was never responded to. Could you, Mr. Loesch?

Mr. Loesch. I have not the foggiest idea.

Senator Kennedy. What happens after a change of administration? Do these things kind of get lost somewhere in the file or is there any tickler file—anybody go on down there to try to dig this thing out in order to try to bring some kind of justice, or do you just say "because sometime in the past they could not do it and some other Justice Department did not do it, therefore, we do not have any intention to do it."

Mr. Loesch. That certainly is not our practice, Mr. Chairman, if you are addressing the question to me. We have carried on with great vigor——

Senator Kennedy. Sure.

Mr. Loesch (continuing). The previous administration's initiatives as well as making some of our own.

Senator Kennedy. I am afraid it is a vote. We will get back a little quicker, we hope. We will recess for a while.

(A recess was taken.)

Senator Kennedy. Mr. Kiechel, we were talking about a case in which the Justice Department had requested information or the development of evidence in terms of whether there was fishing going on, by the Klamath Tribe. Justice had requested that information in the development of the case, and they had not gotten the information or evidence in from either the Interior or the tribe's attorney, is that right?

Mr. Kiechel. That was my understanding of Mr. France's recital of the case. The fact we kept an open file indicates——

Senator Kennedy. In a situation like that does the Justice Department feel that if they do not get the information in a reasonable time from Interior, they ought to go on and try to develop this information themselves. It does not seem to me to be a very complex or complicated issue, really.

Mr. Kiechel. Well, there are two reasons why, I think, the answer is in the negative, Mr. Chairman. In the first place, it is not within our capability to investigate matters and factfind and develop these matters to the extent that they can result in evidence. When we get into court, of course, we employ expert witnesses and prepare the matter for presentation.

The second point is, and this is one that relates to the basic relationship between the Department of Justice and the Department of the Interior, and that is that by operation of law, 25 U.S.C. 2, the Congress has put the primary responsibility for Indian affairs and administration of reservations and tribal lands in the Secretary, and it is for that reason, as well as the practical one, that we look to Interior for this kind of service, if I can use that term.

Senator Kennedy. Of course, 25 U.S. 175 provides that the U.S attorneys assume responsibility in this area.

Mr. Kiechel. Yes, Mr. Chairman, that is right.

Senator Kennedy. So I mean, I would think that the Justice Department could also reach the conclusion that they were going to carry that responsibility through as it does in these other areas that we have reviewed, to undertake within certain dimensions the gathering of certain information, could they not?

Mr. KIECHEL. Well, I think there is no legal disability, certainly, for the U.S. attorney and the Attorney General and the Department of Justice to represent the Indians.

Senator KENNEDY. It is really a question of desire.

Mr. KIECHEL. No, it is not a question of desire. Mr. Chairman——

Senator KENNEDY. Is there any reason that you could not do it if the Attorney General called you in and said, "Now let us go ahead and do this."

Mr. KIECHEL. The easy answer to your question, Mr. Chairman, is to say, "Sure, give us the money, we will employ the staff, we will get all of these specialists and experts in our establishment, and then we can." But I do not think that really is a result which comports with either the basic statutory responsibility of the Interior Department or with the basic litigation function of the Attorney General.

Senator KENNEDY. Is that what the Indian tribes would like you to do?

Mr. KIECHEL. Well, in this particular case we are talking about, Mr. Chairman, as I understand the statement of facts, the Department of Justice sought the evidence, and they sought it both from the tribe and they sought it from the Interior Department. Neither of those sources supplied the information or the evidence. So that——

Senator KENNEDY. What information did you get back from the tribe, for example?

Mr. KIECHEL. Mr. France said we received none from either.

Senator KENNEDY. He wrote to the tribes, is that right?

Mr. KIECHEL. That is my understanding.

Senator KENNEDY. I mean, did the U.S. Attorney go on out and visit with the tribal members or was it just done by correspondence?

Mr. FRANCE. No, sir, we wrote tribal counsel, the Klamath Tribe had tribal counsel and the tribal counsel had requested the Department of Justice take action and in response to that request we advised the tribal counsel of the additional evidence we would need. The additional evidence was not furnished by tribal counsel or by the Department of the Interior. We had no direct correspondence with the tribe itself, just through tribal counsel.

(The following letter, responding to an inquiry from the chairman to counsel for the Klamath, further elaborates on this issue:)

WILKINSON, CRAGUN & BARKER,
Washington, D.C., January 31, 1972.

HON. EDWARD M. KENNEDY,
U.S. Senate,
Washington, D.C.

DEAR SENATOR KENNEDY: This is in response to your letter of December 14 respecting my testimony before the Senate Committee on Interior and Insular Affairs on the proposed litigation to be brought by the Department of Justice on behalf of the Klamath and Modoc Tribes and Yahooskin Band of Snake Indians against the California-Oregon Power Company (COPCO).

In view of the response by the representative of the Department of Justice, we have gone back through our files to determine what we can offer. Our files are not as complete as we would like, but we have been able to refresh recollections which two members of our firm have. After this review, it still appears to us, whether intentional or not, that the rights of the Klamaths were buried by the weight of government self-interest.

First, we should point out that there has been prior testimony on this situation before Congressional committees. For instance, when "termination" legislation involving the Klamath Tribe was before the Congress, we suggested that proper disposition of the COPCO case was one of the items which the United States should accomplish prior to terminating the tribe. (Hearings before Subcommittee on Indian Affairs, United States Senate, 85th Cong., 2d Sess., on S. 2047 and S. 3051, p. 471).

Our file contains some excerpts taken from a letter from the Department of Justice to the United States Attorney in San Francisco dated February 12, 1946. A copy was forwarded to the Assistant Secretary of Interior on March 18, 1946. It appears that this letter set forth the theory on which the case against California-Oregon Power Company should be pursued, instructed the U.S. Attorney to draft a complaint to be filed with the United States District Court for the Northern District of California, requested that the draft be returned to the Department of Justice for review, and advised that the attorney of the Department of Justice assigned to the case was then in California and would contact the United States Attorney to have discussions with him. A copy of the excerpts contained in our file is attached to this letter and marked Exhibit A. My recollection is that I was once informed that a complaint had been finalized, was sent to California for filing and a decision then made to refrain from filing it. We felt that the change in direction on the part of the Department of Justice was directed, at least in substantial part by its necessity to defend the United States against claims by Indian tribes for loss of fishing rights in usual and accustomed places resulting from construction of dams by the Corps of Engineers on the Columbia River during the years immediately following World War II.

In any event, the letter of February 12, 1946, mentioned above requested that the Department of Interior develop a means of establishing evidence of value of the fish lost by the failure of COPCO to provide a means for a continuation of the fishing runs. This was done. In fact, there was a memorandum respecting the damages in the proposed action prepared by Mr. Howard M. Gullickson, District Counsel, Department of Interior, dated October 4, 1946. A copy of that memorandum is attached as Exhibit B to this letter. You will note, page 1, that Mr. Gullickson found that the "evidence points conclusively to the fact that the construction of the two dams completely obstructed the passage of salmon up the Klamath River above the dam and into the Sprague and Williamson Rivers on the Klamath Indian Reservation where the fisheries were located." This was supported by considerable evidence gathered from Indians and non-Indian residents in the area during the years 1940–42. It is difficult to square this information, which was available to the United States in 1946, with the assertion by the Department of Justice, approximately ten years later, that it had insufficient evidence to show that salmon had ever passed up the Klamath River and into the Sprague and Williamson Rivers on the Klamath Indian Reservation. We began to represent the Klamath Tribe prior to World War II, and we were consistently advised by elderly Indians that salmon had been available before the dams were constructed but not thereafter. We never heard of any evidence to the contrary.

Our files indicate that the delegates from the Klamath Tribe consulted with an attorney or attorneys at the Department of Justice as late as 1950 and were advised that additional information was being gathered in Oregon and there was every indication that the government would proceed with the case. In fact, two of the older members of the Klamath delegation were able to assure Department of Justice attorneys that they had clear boyhood recollections of the fisheries on the Sprague and Williamson Rivers and a clear recollection that those fisheries had been destroyed by construction of the two dams involved.

Our file does not contain any communication from the Department of Justice during 1956, but it does contain information which indicates that the Department of Justice had indicated to the Department of Interior some doubt about proceeding with the case. One report indicates, as we were long aware, that extensive questioning of Klamath Indians was done at or about the time the Department of Justice was asked to institute suit (starting about 1940), that such information was available to the Department of the Interior (File 23282–40–931 Klamath, and 8872–50–931 Klamath) and, we assumed, to the Department of Justice. Also, it is clear that the Bureau of Fish and Wildlife had prepared two reports on possible damages. One report had established damages at something in the neighborhood of $330,000, and another in the neighborhood of $605,000. Following World War II, as indicated above, the Department of Justice settled several claims of Indian Tribes arising from damages caused by construction of dams on major rivers of the northwest. Included in this group were at least the Yakima and Nez Perce Tribes. Celillo Falls was a focal point for establishment of Indian fishing rights. We then understood there was a philosophical difference of opinion among lawyers in the Department of Justice, depending on whether they were defending the government against Indian tribal claims or reviewing possible cases on behalf of Indian tribes.

We did write a letter to the Attorney General of the United States on February 26, 1958, advising of the long pendency of the case, mentioning that the Klamath Tribe was subject to termination legislation, and this pending case should be one of the problems completed by the United States Government before it terminated its trust responsibility over the Klamath Tribe. We received a response to this letter on January 19, 1959. A copy is attached as Exhibit C. This was five days after a contract for continued representation of the Klamath Tribe had been disapproved by the Department of Interior. (The reason for the disapproval was the fact that the Department of Interior had, without notice to the Indians or their counsel, "separated" the Klamath funds into accounts for the "remaining" members and the "withdrawing" members, under the termination act. This, said the Department of the Interior, left no funds to pay "tribal attorneys.") We were therefore without authority to do anything more for the Klamath Tribe on this or other problems.

We have tried to make this information as complete as possible. We hope it will satisfy your purpose.

Respectfully yours,

GLEN A. WILKINSON.

U.S. DEPARTMENT OF JUSTICE,
Washington, D.C., January 19, 1959.

WILKINSON, CRAGUN & BARKER,
Washington, D.C.

GENTLEMEN: Further reference is made to your letter of February 26, 1958, relative to the claim of the Klamath and Modoc Tribes and the Yahooskin Band of Snake Indians for damages for the alleged loss of fishing rights because of the construction of two dams by the California-Oregon Power Company.

This Department had previously expressed the view that the evidence made available to it was not sufficient and that it was not felt the institution of suit was justified unless we had further assurance that the alleged damages suffered by the Indians could be proved. We have now received a further report from the Department of the Interior which, to some extent, reviews the history of this matter but gives us no indication whatever of the existence of any additional evidence in support of the claim of the Indians. Reference is made to the fact that in 1856 the attorneys for the Indians had indicated a desire to discuss the matter further but, apparently, no concrete action has been taken by anyone since that time.

The matter appears to have reached the stage where the attorneys for the Indians, the Department of the Interior, and this Department are each awaiting action by some other party. In view of this, we can do little but restate our position which is, that we do not feel the evidence at hand is sufficient to establish the damages claimed by the Indians and, until such evidence is submitted to this Department, we do not feel justified in the institution of suit. We will be glad to discuss the merits of the claim of the Indians and the question of proof with members of your firm at any time you feel you have anything constructive to offer.

Sincerely,

PERRY W. MORTON,
Assistant Attorney General, Lands Division.
By ROBT. E. MULRONEY,
Chief, Trial Section.

EXCERPTS FROM LETTER FROM ACTING ASSISTANT ATTORNEY GENERAL, LANDS DIVISION, J. EDWARD WILLIAMS, TO MR. FRANK J. HENNESSY, U.S. ATTORNEY

COVER LETTER FROM LANDS DIVISION TO ASSISTANT SECRETARY OF THE INTERIOR, DATED MARCH 18, 1946

It will be observed from that communication [see below] that the United States will seek to recover the value of the fisheries at the time they were destroyed by the acts of the power company, with interest and any special damage which may have arisen.

LETTER FROM ACTING HEAD, LANDS DIVISION, TO U.S ATTORNEY, SAN FRANCISCO, DATED FEBRUARY 12, 1946

Excerpts:

It is disclosed in the letter of referral that the power company, as the result of its construction of two hydroelectric dams in the State of California, has destroyed salmon fisheries reserved by the Klamath Indians in their Treaty of October 14, 1864, with the United States (16 Stat. 707). [p. 1]

* * * * * * *

The fisheries referred to are located on the Williamson and Sprague Rivers. Both rivers are almost entirely within the Klamath Indian Reservation. Just below the confluence of the Williamson and Sprague Rivers, the former empties into Klamath Lake which constitutes the source of the Klamath River. Accordingly, when the power company constructed its dams without fishways, the salmon could no longer ascend to the fisheries. From the enclosed map, the respective locations of the sites referred to may be observed. [p. 1]

* * * * * * *

It has been variously estimated that at the time the fish were prevented from ascending to the Williamson and Sprague Rivers, the Klamath Indians were taking annually between 120,000 and 300,000 pounds of fish. [p. 2]

* * * * * * *

It is the opinion of the Department that the provision in the Treaty of 1864 pursuant to which the Indians retained the "exclusive right of taking fish in the streams and lakes" carried with it by implication an assurance that the salmon could not be obstructed in the manner which has occurred from ascending to the fisheries here involved. [p. 3]

* * * * * * *

It is the opinion of the Department that the enactment of the States of California* and Oregon* of statutes pursuant to which dam owners were relieved of the common law obligation to maintain fishways has no effect upon the right of the United States to recover damages on behalf of the Klamath Indians for the injury to their fisheries. A careful review of those legislative enactments has failed to disclose an intendiment on the part of either legislature to absolve the dam owners from civil liability which would have adhered under the common law in the event the construction of dams without fishways resulted in the destruction of valuable rights of fishery. [p. 15; footnotes omitted]

* * * * * * *

That the rights of fishery here involved are in the nature of an interest in realty has previously been discussed. In the consideration which follows it will be disclosed that the above-quoted constitutional safeguard protects interests of that character from destruction by what is tantamount to confiscatory legislation. Otherwise stated, the legislatures under the present factual situation may not authorize what amount to a private nuisance and at the same time absolve the power company from liability for injuries sustained. [p. 19]

* * * * * * *

The obligation to make restitution for damage to fisheries emanating from the obstruction of the passage of migratory fish was recognized in the previously cited case of *Holyoke Co.* v. *Lyman*, 82 U.S. 500. In speaking of the power of the legislature to grant a charter to a corporation empowering it to construct a dam without fishways the Court made the following pertinent statement: "* * * a charter may doubtless be granted to build a dam across a river whose whole course is within the state granting the franchise, with a provision exempting the corporation from all obligation to construct such fishway for the free passage of the fish, as the enterprise of erecting a dam to create power to operate mills is so far public in its nature that it is competent for the legislature to exercise the power of eminent domain to accomplish the purpose, if suitable provision is made to compensate the owners of the property or rights condemned under that power, but it may be more doubtful whether the legislature of a state can make a contract with such a corporation authorizing them to construct a dam across a river flowing through two or more states, which shall permanently exempt the grantees from all such obligation and destroy forever the rights of fishery in the river throughout its whole course from its source to its confluence with tide waters." [pp. 23–24]

* * * * * * *

Clearly the Indians have been deprived of valuable rights through the construction of the dams and they cannot under the constitutions of the states in question be deprived of their right to redress." [p. 24]

* * * * * * *

In the paragraphs which precede, the nature of the right of fishery has been reviewed and the point made that the right could not be taken for a public purpose without just compensation. The next factor to be considered is whether the state in its exercise of police power can enact legislation which in effect defeats a treaty provision reserving to the Klamath Indians a right of great value. [p. 27]

* * * * * * *

The authority of the United States to establish fisheries pursuant to a treaty was discussed in the case of *United States* v. *Winans*, 198 U.S. 371, to which reference has previously been made. There the Court held that the treaty with the Indians was such that it guaranteed to them the continued right to fish in their accustomed places and that in effect there was imposed upon the land a servitude in favor of the Indians which would permit them to exercise that right even upon the lands of the respondents. . . . [p. 31]

* * * * * * *

In the light of the rule enunciated in the decision of *Missouri* v. *Holland*, *supra*, it is the opinion of the Department that the State of California does not have the authority to enact legislation which would in any way defeat the rights reserved by the Indians in the treaty of 1864. [p. 34]

* * * * * * *

To make the necessary ascertainment as to damages it is essential to determine their nature and the criterion which will govern under the circumstances. From the facts presented it has been concluded that full recovery for the value of the fisheries is the only adequate remedy. Clearly the obstruction to the passage of the salmon is permanent in character and would not, even if the referral agency desired it, be subject to abatement. [p. 40]

* * * * * * *

On the basis of the foregoing it is the conclusion of the Department that the United States is entitled to recover from the Power Company on behalf of the Klamath Indians all of the damages which that tribe has sustained as a result of the acts to which reference has been made. It is further concluded that the legislatures of the States of California and Oregon did not intend to absolve dam owners within their respective jurisdictions from liability for damages to fisheries when dams were constructed without fishways in conformity with the enactments which have been discussed throughout. However, if those acts were intended to grant immunity for damages ensuring from the construction of dams without fishways, they are unconstitutional and void. [p. 42]

Statement of Damages

ACTION AGAINST CALIFORNIA-OREGON POWER CO.

The United States Indian Service has been requested to advise the Department of Justice the amount of damages which the United States, acting on behalf of the Klamath Tribe of Indians, should seek to recover against the California-Oregon Power Company, caused by the Power Company's construction of two hydro-electric dams on the Klamath River in the State of California resulting in the loss of the salmon fisheries reserved by the Klamath Indians in their treaty of October 14, 1864, with the United States (16 Stat. 707).

The evidence points conclusively to the fact that the construction of the two dams completely obstructed the passage of salmon up the Klamath River above the dam and into the Sprague and Williamson Rivers on the Klamath Indian Reservation where the fisheries were located. The evidence also will establish that the salmon were mainly of the Quincat (King, Chinook) species and were taken during heavy spawning runs up the Sprague and Williamson Rivers during the months of September and October. These fall salmon fisheries constituted one of the main source of Indian food supply. The damages sought will be predicated on the loss of these specific fisheries although minor, undetermined losses of other species of Oncorhynchus, or other seagoing fish may have occurred.

EVALUATING THE FISHERIES

The problem of evaluating the salmon resource as a basis for recovery of damages in a lawsuit is unique. Such reported precedents on the evaluation of a fishery as the case of *United States* v. *Shingle*, 91 F. 2d 85 (C.C.A. 9, 1937), are not entirely applicable to the instant problem.

Proposed and actual dam construction in the Pacific Coast areas in recent years, and the consequent threat to the salmon runs and other fisheries have caused grave concern among commercial fishing interests, sportsmens' groups, ichthyologists and conservation authorities. This has precipitated some extensive study into the factors which should be considered in arriving at the monetary value of the salmon resource.[1]

The possibility that experts in these studies might furnish new approaches to the problem or some degree of uniform method in arriving at a valuation of a salmon fishery in the terms of dollars and cents prompted interviews with such eminently qualified men as Dr. James W. Moffett, Aquatic Biologist, Palo Alto, California, who is presently in charge of Central Valley Investigation for the United States Fish and Wildlife Service, Mr. Reed S. Nielson, Aquatic Biologist, Palo Alto, California, doing fish population studies in Central Valley, California, Dr. Paul R. Needham, Director of Fisheries of the State of Oregon, Portland, Oregon, and Mr. Fred J. Foster, Administrative Officer, U.S. Fish and Wildlife Service, Seattle, Washington. Publication sources were also examined which included the library at the Museum building and the general library at Stanford University, the California Fish and Game library in San Francisco, the Seattle Public Library and the files of the "Pacific Fisherman," a monthly trade magazine, at Seattle.

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[1] For example the report of the Board of Consultants on the Fish Problems of the Upper Columbia River, 1939, Section IIb, R. D. Calkins, Professor of Economics, University of California, Berkeley, California. W. F. Durand, Prof. Mechanical Engineering (Emeritus) Stanford University, Palo Alto, California, and Willis R. Rich, Professor of Biology, Stanford University, Palo Alto, California, stated: "In general, the gross contribution of a resource to economic welfare may be measured roughly in terms of the annual real incomes which are dependent upon its use. In any refined analysis, which is impossible here, allowance would need to be made for the number of persons to be supported on such incomes and for various non-measurable social values. The loss or depletion of the resources would tend to reduce the number and/or magnitude of such incomes, occasion capital losses in industries dependent on its utilization, and involve financial and social costs of transferring capital facilities and people to other pursuits. After the transition to what may be generally regarded as second choice and less advantageous pursuits, the magnitude, if not the number of personal incomes (at constant price levels), would typically be less.

"The net annual value of the resource might be considered as the difference between the economic welfare obtained with the utilization of the resource and that which would result in its absence. That is, the net contribution of the resource could be taken roughly to represent the difference in economic welfare, as measured by the difference in the number and magnitude of personal incomes in the region where the resource is used, and the number and magnitude of such incomes after alternative industries and pursuits had been found. But the loss of a resource which is being utilized, especially the sudden loss, would, as noted above, cause capital losses and costs of transfer to new industries. These are private and social costs to be avoided if possible. Hence, they represent part of the cost of losing the resource, and an added value in maintaining it."

The net result of the inquiry established that there is little uniformity in approach to the problem. Various methods and factors have been used in particular situations.[2]

Consequently, damages must be based on the loss of subsistence fishing. Ample testimony can be produced to the effect that salmon, before its disappearance formed a substantial if not the chief reason of food for the Klamath Indians.

Likewise it can be shown that, although all of the Klamaths did not catch salmon, there was a large group of Klamath Fishermen who caught fish, not only for their own use but gave ample quantities of salmon to the rest of the members

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[2] A. Wholesale value of canned product, if all were canned.

1. Ref.: X. "Fish and Wildlife. A. Fisheries Section, Evaluation of the Columbia River Fisheries." Prepared by U.S. Fish and Wildlife Service from reports of the research staffs of the U.S. Fish and Wildlife Service, the Washington Department of Fisheries, and the Oregon Fish Commission. December 9, 1944.

Most of these fish are canned but a portion are sold fresh and some are mild-cured. The total catch in pounds was estimated, the number of cases that poundage would pack was calculated, and the annual wholesale value, based on average 1936–39 prices, was calculated.

B. Wholesale value of fish on fresh fish market.

1. Ref.: "A Preliminary Report on the Fishery Resources of California in Relation to the Central Valley Project," by Dr. W. H. Rich and Dr. J. W. Moffett, U.S. Fish and Wildlife Service and A. O. Taft and Dr. R. Van Cleve, California Division of Fish and Game. December 27, 1944, pp. d–10.

Most of these fish are sold fresh. Price of dressed fish based on average 1936–39 wholesale prices. Catch in pounds of round fish estimated, pounds of dressed fish this would represent was calculated, and wholesale value then computed.

2. Ref: "Value of Green River Salmon" (Manuscript), by Harlan B. Holmes, U.S. Fish and Wildlife Service.

Used estimated catch times price to fisherman based on 1935–1939 prices, times O.P.A. mark-up percentages to get wholesale value. This method was used as it was virtually impossible to obtain wholesale prices directly.

C. Loss that would be incurred if resource was destroyed, in part.

1. Ref: Table Mountain Dam—A Public Liability," A report on proposed Table Mountain Dam on the Sacramento River, California, issued by the Salmon Conservation League of California. Prepared by California CIO Council Research Department, Paul G. Pinsky, Director, by Gerald H. Gottlief, April 1945, pp. 23–30.

In this method, the value of the resource is considered to be the capitalized value (at 3%) of the annual loss during a 50-year period.

The annual loss is estimated by taking the following facts under consideration:

1. Reduction in net incomes of those salmon fishermen who continue working.

2. Reduction in net incomes resulting from elimination of opportunities for earning livelihoods through salmon fishing.

All persons interviewed in the subject exhibited extreme interest in any formula that might be used in a lawsuit. Suggestions of doubtful value from a practical standpoint were received. One proposal was for an economic study as to the effect the blocking of the salmon had on the Indian population, taking into account the number of Indians deprived of their fishing occupation, the resultant shift in economy, the types and cost of food purchased to replace the salmon. This is believed impractical because of the time involved in such a study, the lack of available trained economists, the lapse of time since the injury with the attendant lack of specific information, and the doubtful competence of such evidence in court.

Another proposed only that the retail cost of meat or fish necessary to replace the salmon be used rather than the value of the salmon based upon the price of the fishermen.

Another suggested that if the value of the salmon is to be used, the recovery should reflect annual price increases on salmon from the time of the taking to the present, but had no solution as to how this method could be projected into the future unless the instant suit is for damages only to the date suit is commenced. This would permit subsequent action based on future salmon price. I do not recommend such a proposal.

RECOMMENDED DAMAGES

The following basis for damages is recommended. Simply stated, the annual catch of chinook salmon by the Klamath Indians prior to the construction of the dams would be reduced to poundage figures based on average weight per fish, multiplied by the prevailing price paid to fishermen at the time of the taking. As this was a permanent taking, it would be capitalized at 4%. Thus, the value of the annual catch would represent 4% of the damage sought. This is a plain, sound basis to go on and, although it does not afford as great a recovery as other methods, I believe it will stand up in court. The 4% capitalization is generally employed by a fair figure by fishing valuation experts. All fishing authorities interviewed indicated that this will constitute a firm basis for recovery. The obvious advantage is the fact that we will have available expert testimony to support our claim.

3. Net capital loss through sale of idle fishing boats and gear.

4. Net capital loss through disuse of processing plant.

5. Decrease in net profit to processing industry.

6. Loss annually of 390,000 pounds of sport-caught salmon (at equivalent allowable replacement value of 92 cents lb.)

D. Potential value of streams or sections of streams based on extent of suitable spawning areas.

1. Ref: "Substantiating Data, Powder River Basin, Baker Project, Oregon," by Z. E. Parkhurst and C. H. Rouse, U.S. Fish and Wildlife Service, March 16, 1945.

The total number of square yards of suitable spawning area was estimated and divided of the tribe to meet their needs for the fall and winter.[3] Everyone agrees that a large proportion of the catch was dried for winter consumption. In the latter part of August, 1946, your District Counsel interviewed approximately forty witnesses, mostly Indians, in all parts of the Reservation,[4] in addition to those who had been interviewed by his predecessor in 1941.

According to the Report of the Commissioner of Fisheries for 1910, chinook salmon from Washington brought 5.49 cents a pound in 1909 and at San Franciso, the same year, they brought 4.45 cents a pound. These figures were derived by dividing the total value by the total pounds, and they represent only the value to the fishermen, not the retail value.

It is felt that practically all information as to the extent of subsistence fishing has been exhausted. The attached table (Appendix 1) summarizes salient points of available Indian testimony as to subsistence salmon fishing. Statements taken generally indicate that the salmon taken and dried during the September–October run lasted until spring. Appendix 2 shows the census of enrolled Indians of the Klamath jurisdiction for the years 1897 to 1910, inclusive. Based on the two preceding tables, a fairly good estimate of the total annual consumption of salmon can be made. For the purpose of the prayer for damages, I feel that we should deliberately fix a high estimate of appropriately 200 pounds per capita. It is not unreasonable to assume that each individual consumed this amount over a period of approximately six months.

An award for a lesser amount can be made if the evidence does not justify this high a figure. Taking the average population at 1100 and the annual per capita

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by 20 (the average size of a chinook salmon nest of redd (5 square yards) times a density factor of 4 to allow space between nests) times 2 (1 male and 1 female salmon per nest) equals the potential number of spawners that the spawning area could accommodate.

It is known that approximately 2 adult salmon are taken in the Columbia River commercial fishery for each one that escapes to spawn during August and September, so the potential commercial catch would be the product of 2 times the potential number of spawners. This product multiplied by 25 (the average weight per fish) and divided by 68 (the pounds of round fish per 48 pound case of canned product) times $14.33 (prewar wholesale price per case) equals the potential, wholesale, annual income. This calculation does not include the potential contribution to the offshore troll fishery which is known to be considerable.

II. SPORT FISHERIES

A. Arbitrary value of $1.00 per pound taken.

1. Ref.: "X.—Fish and Wildlife. A. Fisheries Section. Evaluation of the Columbia River Fisheries," Prepared by U.S. Fish and Wildlife Service from reports of the research staffs of the U.S. Fish and Wildlife Service, the Washington Department of Fisheries, and the Oregon Fish Commission, Dec. 9, 1944.

2. Ref.: "A. A Preliminary Report on the Fishery Resources of California in Relation to the Central Valley Project," by Dr. W. H. Rich and Dr. J. W. Moffett, U.S. Fish and Wildlife Service and A. C. Taft and Dr. R. Van Cleve, California Division of Fish and Game. Dec. 27, 1944. pp. 6–10.

This was considered to be a conservative value. Total number of sport-caught salmon was estimated and an average weight of 10 pounds was assigned to these fish multiplied by $1.00 to determine the annual value.

B. Cost of fish to fisherman.

1. Ref: "Value of Green River Salmon" (manuscript), by Harland B. Holmes, U.S. Fish and Wildlife Service.

Based on estimated man-days of fishing times estimated cost per man-day. This worked out at approximately $9.58 per salmon (chinook and silver) and $27.20 per steelhead trout.

C. Income to basin or area directly attributable to the sports fishery.

1. Ref: "A Preliminary Report on Fisheries Problems of the Rogue River in Relation to General Water Development Plans," by R. S. Nielson, U.S. Fish and Wildlife Service and C. A. Lockwood, Oregon State Game Commission. March 1945 pp. 5–7.

Based on estimated income received by resorts, camps, hotels, stores, custom canners, boat and fishing guides, etc. This is almost comparable to "Cost to Fisherman." Some fishermen would incur expenses ouside the area that would not be included; however, some expenses might be incurred in the area for items that might later be used in other areas.

Evidence of sale or barter is meager, although special effort was made to develop information along this line. Mr. Watson Duffy, an Indian of Beatty, Oregon, advised that some of the Indian fishermen (he could recall none still living) caught salmon at Cottonwood Springs and would haul 30 or 40 fish to Lakeview, Oregon, where they would receive from $1.50 to $2.50 per fish. Mrs. Carrie V. Schmitz (white) of Beatty, Oregon, lived on a ranch just east of the Klamath Reservation and remembers trading potatoes, garden truck and butter for salmon with the Indians. Mr. David Skeen states that he often bought fresh salmon from Indian fishermen and paid them $1.00 per fish. No information was obtained as to sales to packers, and it is almost certain none were ever made by the Indians, at the only known packers were located at the mouth of the Klamath River. One of these was the Klamath Trading and Packing Company located at Requa, California; the others were the Klamath River Canning Company and the Del Norte Salmon Canning Company.

[3] Several witnesses will testify that many Indians' meals were composed only of boiled salmon, bread and coffee.

[4] Written statements covering these interviews are almost completed and will be forwarded for use by the Department of Justice.

consumption of salmon at 200 pounds, the total annual consumption amounts to 220,000 pounds.

Although I do not believe that the true and full value of a fishery can be represented by market value where, as here, the product is consumed directly and not sold.[5] No other reliable criterion which would stand up in court is available. Certainly the defendant cannot complain of the standard used.

Seufert Bros. Company, mid-Columbia salmon packers, paid 5¢ per pound for raw salmon purchased during the years 1910 to 1914.

Back issues of the Pacific Fisherman, a monthly trade magazine, reflect:

May, 1911, April 26, 1911—Columbia River Salmon packers decided to pay the following price for raw fish: 6 cents per pound for salmon weighing under 25 pounds; 7½ cents a pound for heavier salmon.

September, 1911—Chinook fishermen on the lower Columbia received 7 cents a pound for raw fish.

October, 1911, Astoria, September 11—Columbia River Packers established the highest prices ever paid for raw fish during the fall season. Fall chinooks and silversides brought 4 cents per pound.

May, 1912—Columbia River Packers decided to pay 6 cents per pound for salmon weighing under 25 pounds; 7½ cents per pound for larger fish.

Attempts made to obtain prices paid by packers at the mouth of the Klamath have proved unsuccessful. However, parity in quality between the Klamath and Columbia salmon may be established.

It is recommended that 6 cents per pound be used as the basis for computation and, multiplied by 220,000 pounds, equals $13,200.00, which represents the approximate value of the annual catch of salmon consumed.

Capitalizing this on the prevailing basis of 4%, the total damages sought would amount to $330,000. It is noted that the Department of Justice at page 42 of its letter of transmittal, dated February 12, 1946, to Mr. Frank J. Hennessy, United States Attorney, suggests that interest on damages from the date of injury be requested. I full concur in that recommendation.

No items of special damage could be determined.

Respectfully submitted.

HOWARD M. GULLICKSON,
District Counsel.

APPENDIX NO. 1

Name	Residence	Size family	Total catch in fish [1]	Reduced to pounds	Per capita consumption
Harry Wright	Modoc Point	7	30	600	26
Delford Lang (regarding Peter Phillips, deceased).	Cowan Rapids	7	[2] 40	800	114
Grover Pompey, Maude Pompey.	Modoc Point	4	200	4,000	[3] 1,000
John Cole		2		[3] 500	230
Mrs. Eliza Crawford		Large	200	[4] 4,000	
John Jackson		4		400	100
James Johnson		10	300–400	[4] 6,000–8,000	
Tom Lang		12	50–60	1,000–1,200	100
Clayton Kirk,[5] total catch				120,000	120
Victor Nelson [5]			9,000	180,000	

[1] Based on average 20 pounds per fish.
[2] Principal catch by spearing only.
[3] Salted down.
[4] Dried 100–200 salmon, gave some away.
[5] Estimates by breakdown.

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[5] In the "Report of the Board of Consultants on the Fish Problems of the Upper Columbia River," Section II, March 7, 1939, submitted to the Bureau of Reclamation by R. D. Calkins, Professor of Economics, University of California; W. F. Durand, Professor of Mechanical Engineering (Emeritus), Stanford University; and Willis H. Rich, Professor of Biology, Stanford University; the authors state, "No reliable method of evaluation of a resource such as this run of fish has been developed. The economic and social importance of such a resource may be considered to depend on the contribution it makes to the social and economic welfare of the population. But to tract out and measure this contribution, except in exceedingly rough terms, is virtually impossible."

Enrolled Indians of the Klamath jurisdiction for the period from 1897 to 1910, inclusive, as shown by the official census on file at this Agency, are as follows:

Year	Number enrolled	Males	Females
1897	1,020	No recapitulation	No recapitulation.
1898	1,072	do	Do.
1899	1,126	do	Do.
1900	[1] 1,145	do	Do.
1901	1,160	do	Do.
1902	1,141	do	Do.
1903	1,166	305 (over 18)	424 (over 14).
1904	1,171	308 (over 18)	410 (over 14).
1905	1,152	No recapitulation	No recapitulation.
1906	1,160	324 (over 18)	413 (over 14).
1907	1,051	489 (all ages)	562 (all ages).
1908	1,038	486 (all ages)	552 (all ages).
1909	1,100	523 (all ages)	577 (all ages).
1910	1,126	528 (all ages)	598 (all ages).

[1] Approximately; census not numbered.

RETURN OF YAKIMA LAND

Senator KENNEDY. In another area in our hearings last month we were told about the request by the Yakima Nation that 21,000 acres administered by the Forest Service be returned to them. (See discussion in volume 1 of these hearings, at pp. 70–73.) The issue was referred to the Justice Department for an opinion. I have heard within Justice Department the head of the Indian Claims Section has been that opinion either from the first or in terms of a review of a prepared draft. The Yakimas, as you know, have an outstanding claim for this land before the Indian Claims Commission. Do you not think the involvement of the Claims Section Chief in the decisionmaking within the Justice Department is a reflection of a clear conflict of interest on the issue?

Mr. KIECHEL. No, Mr. Chairman. The Attorney General in rendering the opinion can call upon whatever agencies within the Department he chooses to for advice, but it, of course, is ultimately the decision of the Attorney General, and his primary aid or staff agency in that respect, as you probably know, is the Office of Legal Counsel. They asked for, they may ask for comments and suggestions but the decision is ultimately that of the Attorney General.

Mr. LOESCH. Mr. Chairman, could I make a comment?

Senator KENNEDY. Yes; I wish you would.

Mr. LOESCH. Could I make a comment here? I think that in cases like this the Indian community or the tribe involved is lucky that there may be a conflict of interest between, in this case, departments. Certainly, in this case it had an effective champion in the Solicitor's Office in the Department of the Interior, and the Solicitor's, the Department's attitude on this totally was in favor of the tribe.

Now, if it had not been for Interior, presumably the whole thing would be left up to Agriculture, which naturally, in accordance with its statutory responsibilities, does not want to turn loose forestland.

CONFLICTS WITHIN INTERIOR

Senator KENNEDY. What about the situation where the Interior's Solicitor would be relying on information from one of the bureaus or agencies inside the Department that has a direct interest in the outcome of the decision.

Mr. MELICH. You mean, Mr. Chairman, where we might have two bureaus within the Department on opposite sides?

Senator KENNEDY. That is right.

Mr. MELICH. Well, of course, that creates, as is very evident since I have been Solicitor, a conflict of interest. There is not any question but what we do have a conflict of interest in that kind of a situation.

Now, if we are not able to resolve it within the respective bureaus, the matter then is referred, I refer it to the Secretary for his decision as to where we shall proceed. I should say in the short period of time under my administration I do not think we have had that kind of situation arise.

Senator KENNEDY. A Trust Counsel will not really help in this, will it?

Mr. MELICH. Yes; I think the Trust Counsel will, or some type of legislation similar to the Trust Counsel, where outside counsel will be employed like the Trust Counsel Authority, where you would avoid this conflict of interest.

Senator KENNEDY. If you could, I will give you, Mr. Kiechel, areas I would like to get some kind of written responses from you on. I will not ask you now because the time is late. I am interested in how the Department of Justice viewed their responsibility in pressing for the maximum recognition of Indian water rights under (1) the *Kent* decree involving the Salt River Indian Reservation, where Indian water rights were apparently totally abandoned.

(2) The *Gila River* decree, where the water rights of the Gila River Reservation were artificially limited to less than the tribe's full *Winters* rights concept.

Or in (3) the *Walker River* case. What about the condemnation actions for (4) the Garrison Dam at Fort Berthold, (5) Owhe Dam on Sioux Reservations, and (6) Yellowtail Dam on the Crow Reservation, where Justice made no efforts to obtain recognition of or compensation for Indian water rights. And perhaps provide the subcommittee with a written report on those cases and we can save some time; would you do that?

Mr. KIECHEL, Very well, sir, we will undertake to give you the facts and the situation on that. I would interpose a disagreement with your characterization of those cases, but we will certainly supply the information.

(The information referred to follows:)

FEBRUARY 4, 1972.

Hon. EDWARD M. KENNEDY,
Chairman, Subcommittee on Administrative Practice and Procedure, Committee on the Judiciary, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: By separate letters and by a statement proposed for insertion following line 23 on page 307 of the Transcript of Proceedings before your Subcommittee on November 30, 1971, we have furnished some of the information that you requested the representative of this Department at the hearings on that date to submit for inclusion in the record. By this letter, we submit the information we have assembled in response to the other requests made at that time, except for a copy of the list of all cases handled by the Department for Indians during the last ten years which is being prepared at the request of the Subcommittee for Indian Affairs of the Senate Interior and Insular Affairs Committee. That list is nearing completion, and when available a copy of it will be submitted to you.

At pages 311–312 of the Transcript, you ask that we submit a number of instances in which Interior has recommended appeal of a decision adverse to Indians and this Department has decided against taking such appeal. A case of this kind is *Confederated Salish and Kootenai Tribes* v. *Vulles*, 437 F. 2d 177 (C.A. 9, 1971). The Department of Justice declined to prosecute the appeal on a factual matter. The Indians did appeal, and won. A slightly different kind of situation is represented by *Agua Caliente Band of Mission Indians* v. *County of Riverside*, No. 71–183, October term 1971, in the Supreme Court. This case was prosecuted by the Indians in their own name and they were represented by tribal counsel. The issue presented related to the validity of a state tax imposed upon a lessee of Indian-owned lands. Interior requested that this Department appear *amicus curiae* in support of the Indians' position. The Solicitor General declined and, when requested by the Supreme Court for a statement of views, filed a brief opposing certiorari and upholding the state tax. It should perhaps be noted that positions advocted by this Department do not always correspond with the recommendations of the Interior Department or of the Indians, and that this may happen whether we are appearing in the name of the United States in behalf of the Indians or as *amicus curiae* at the request of Interior and the Indians in cases wherein the Indians are directly represented by separate counsel. A case of this kind is that of *Puyallup Tribe* v. *Department of Game*, 391 U.S. 392 (1968). The first position of the Tribe in that case was that it was completely free of state regulation in exercise of its treaty-recognized off-reservation fishing rights. Appearing *amicus curiae*, the Solicitor General, based on an earlier decision of the Supreme Court involving an identically worded treaty, took the position that state regulation reasonably necessary for conservation of the fishery resource was permissible provided the regulation in question afforded appropriate recognition to the treaty right. On that basis, the validity of the particular regulation was opposed.

At page 349 of the Transcript, you requested information concerning "the Kent Decree involving the Salt River Indian Reservation where Indian water rights were really totally abandoned," "the Gila River Decree, where the water rights of the Gila River Reservation were artificially limited to less than the tribe's full winter rights concept," and the *Walker River* case. You also asked about "the condemnation actions for the Garrison Dam at Fort Berthold, Oahe Dam on the Sioux Reservation, and Yellowtail Dam on the Crow Reservation where Justice made no efforts to obtain recogniation or compenstation for Indian water rights."

The so-called "Kent Decree" is the Decree entered by the territorial court for the territory of Arizona in the water rights adjudication case of *Hurley, et al.* v. *Abbott, et al.* The suit was filed in 1905 and thereafter the United States intervened in the case. Decree was entered on March 1, 1910, over sixty years ago. So far as we know, none of the attorneys who worked on the case is now living and much of the technical material upon which the decree was based is obviously not presently available. Under the circumstances, it would be very difficult to establish the exact basis on which the decreed water rights were determined. It is noted, however, that a continuous flow of 700 miners inches (approximately 12,670 acre feet per year) with the highest priority on the River was decreed for the use of the Indians living on the Salt River Reservation for the irrigation of approximately 2,500 acres of land. Additional uses of water on other lands of the Salt River Reservation were also decreed. 390 miners inches (approximately 7,059 acre feet per year) was decreed for the use of the Indians living on the Camp McDowell Indian Reservation. While it may well be that a larger claim for the Salt River Reservation than was made in that case would be supportable if the water rights for the Salt River Reservation were litigated as a matter of first impression today, and a Court quite possibly might award a greater right than was recognized in 1910, it does not appear that there was "a total abandonment of the Indian water rights" in this case. We have no knowledge of any requests having been made to this Department for legal proceedings on behalf of the Indians of the Salt River Reservation to obtain a larger allocation of water for use on the Reservation than that decreed in the Kent Decree.

The so-called "Gila Decree" was entered June 29, 1935, by the United States District Court for the District of Arizona in the case entitled *United States* v. *Gila Valley Irrigation District, et al.* Complaint in that case was filed in 1927. There were hundreds of defendants. The decree was entered by consent of all parties, and was specifically approved by the Secretary of the Interior as well as the Attorney General. It is 113 pages long (on 11 X 14 paper), including a 58-page listing of the rights determined. The first right on this listing was decreed to the

United States, with an immemorial priority date, for the diversion of 210,000 acre feet of water annually for use on 35,000 acres of the Gila River Indian Reservation. The second right on this list was decreed to the United States, with a priority date of 1846, for the diversion of 6,000 acre feet of water annually for use on 1,000 acres of irrigable lands on the San Carlos Apache Indian Reservation within the Gila River watershed. Many additional rights were decreed to the United States, with priorities ranging from 1868 to 1924, for use on lands of the San Carlos Project, an irrigation project authorized by Congress to store water for use on and to serve 100,546 acres of lands on the Gila River Reservation and on non-Indian lands included within the Project. 50,000 acres of the Project lands were in non-Indian ownership, and the balance were Reservation lands. Finally, a right was decreed to divert 17,950 acre feet of water for the irrigation of approximately 3,000 acres of Indian lands at the Gila Crossing District on the Gila Reservation, with priority dates ranging from 1873 to 1903.

The Decree does contain a number of complex operational provisions, the effect of some of which is to permit the holders of junior natural flow rights upstream from Coolidge Reservoir, an element of the San Carlos Project, subject to an overall limitation, to use water which would otherwise be required to flow downstream for satisfaction of the immemorial priority rights of the Gila Indian Reservation. However, this effect is keyed to the availability of stored water in the Reservoir. (Art. VIII (2), Decree). Whether these provisions constitute an artificial limitation "to less than the tribe's full winter rights concept" is a question on which we do not express an opinion. In view of the apparent purpose to substitute stored water for natural flow water the characterization would seem at least to be debatable.

As stated with respect to the Kent Decree provisions pertaining to the Salt River Indian Reservation, we have no knowledge of any request to the Department of Justice since the Gila Decree was entered to institute proceedings for modification of the Decree on behalf of either of the Indian Reservations within the watershed of the Gila River. On the contrary, there have been several requests over the years for ancillary proceedings to enforce the provisions of the Decree for the benefit of the Gila River Indian Reservation, the latest of which was recently decided by the Ninth Circuit Court of Appeals in favor of the contentions made by the United States in behalf of the Indians of the Reservation and of the non-Indian lands within the San Carlos Project. A copy of the Court of Appeals decision in this proceeding, dated January 19, 1972, is enclosed.

The case of *United States* v. *Walker River Irrigation District, et al.*, was filed in 1924. An amended complaint was filed in 1926. In its amended complaint, the United States asserted a right to a continuous flow of 150 cubic feet per second for use on the Walker River Indian Reservation. This amount was considered sufficient to irrigate all of the irrigable lands on the Reservation. A priority date of November 29, 1859, was asserted. The trial court decreed a right to the use of 22.93 cubic feet per second, sufficient water to irrigate only the acreage which had been historically irrigated on the Reservation, and awarded priority dates ranging from 1868 to 1886, the times as of which the waters had first been put to beneficial use on the Reservation. The United States appealed this decision to the Circuit Court of Appeals for the Ninth Circuit. The Court of Appeals ruled that the priority date of the water right for the Walker River Indian Reservation was November 29, 1859; that when the first steps were taken to have the reservation lands withdrawn from the public domain for use as an Indian Reservation a right to the use of water to meet the needs of the Indians on the Reservation was reserved by implication. The Court ruled, however, that the ultimate needs for water on the Reservation were not in all cases measured by the maximum irrigable acreage and that in this case seventy years experience indicated that the needs of the Reservation required a flow of 26.25 cubic feet per second rather than the 150 cubic feet per second requested by the United States. At the time, this decision was generally considered to be a considerable victory for the United States and the Indians because it recognized that a Winters doctrine right—a reserved right to the use of water for an Indian Reservation—could be established by an executive order withdrawal as well as by treaty. It continues to be a useful precedent and in *Arizona* v. *California* neither the Special Master nor the Supreme Court found the Ninth's Circuit's decision that 70 years experience was a proper basis for determining the needs of the Indians an impediment to the decision reached in that case.

For your assistance in further considering these three cases, we are forwarding copies of the decree in the *Gils and Salt River* cases and the Appellate opinion in the *Walker River* case.

In response to your request respecting the Garrison, Oahe and Yellowtail Dam Projects, a search has been made of the records of the Department relating to condemnation proceedings filed in connection with these projects. A report has also been received from the Corps of Engineers setting out further information concerning the lands acquired for the Garrison Dam and Oahe Dam Projects. A copy of that report is attached.

As indicated in the report from the Corps of Engineers, of the approximate 463,341 acres acquired for the Garrison Project, 152,578.88 acres of the Fort Berthold Indian Reservation in North Dakota were transferred by legislative action from the Three Affiliated Tribes (Cree, Aricara and Handan) primarily under the provisions of Pub. L. 437, 81st Congress; 146,420.29 acres were transferred under Pub. L. 437 of which 22,017.19 acres were tribal lands and 124,403.10 acres were allotted lands. The remaining 6,098.59 acres were all allotted lands. Only a few small tracts were acquired in condemnation proceedings in this project, all of which consisted of allotted lands.

Of the 423,883 acres acquired for the Oahe Project, 99,677.85 acres were acquired in fee from the Cheyenne River Sioux Indians and approximately 56,702.91 acres were acquired in fee from the Standing Rock Sioux Tribe and Indian owners. The lands transferred to the Cheyenne River Sioux Indians were primarily transferred under the provisions of Pub. L. 776, 83rd Congress and lands of the Standing Rock Sioux Indians were transferred under Pub. L. 85–915, 85th Congress. Individual figures showing the breakdown of these lands between tribal and allotted lands are not available. Approximately 4,379.58 acres of allotted lands were acquired through condemnation proceedings.

By Pub. L. 85–523, approved July 15, 1958, approximately 5,700 acres of land in Big Horn County, Montana, were transferred to the United States from the Crow Indian Tribe for the Yellowtail Dam Project of the Bureau of Reclamation of the Department of the Interior. Only several small tracts in this project were acquired by condemnation proceedings and these properties consisted of allotted lands.

No water rights were specifically taken either under the above-mentioned legislation or in the condemnation proceedings. However, where water rights were appurtenant to the fee ownership of the properties they were presumably acquired by the United States as a part of the title. The appraisals of these properties are not available to the Department and there is no indication in the departmental records of what, if any, additional values were allowed to the owners of thea llotted lands for specific water rights.

The Corps of Engineers advises that about 2,000 acres of Indian lands were being irrigated from the Missouri River in the portions acquired for the Garrison Dam Project and that at the time of transfer, higher evaluations were given to these irrigated lands. The individual appraisals are not available for inspection to determine the exact consideration given to the water rights for irrigation purposes.

The Corps of Engineers also advises that generally little irrigation was practiced by the Indians at the time of the acquisition of lands for the Oahe Project and again the appraisals are not available to determine what consideration was given to the values of irrigated lands or lands capable and susceptible of irrigation with available water supplies.

The departmental files disclose no special consideration or evaluation of water rights in the several condemnation proceedings filed to acquire lands for these projects. Some of these proceedings were filed solely for the purpose of small outstanding interests of individual owners who had not agreed to the value of the individual properties. Listings of the several condemnation proceedings showing the lands involved, whether our records indicate that water rights were involved, and other information pertinent to each proceeding are enclosed.

There was additional litigation in the United States District Court for the District of Montana of the Crow Tribe's claim to compensation of its lands taken for the Yellowtail Dam and Reservoir Project. Examination of Departmental records respecting that litigation discloses the following information which may be of interest to you.

Construction of the Project was authorized by the Flood Control Act of 1944 Plans to develop Yellowtail Dam and Reservoir had been under consideration for many years Preconstruction work was provided for in appropriation acts from 1947 to 1957. When it came time to acquire tribal land for the project, the Senate Committee considered the problem and filed its report Senate Report 700 (84th Cong., 1st sess.) at page 10 recommended that the Secretary should proceed immediately under whatever statutory authority was available to secure the rights-of-way necessary for the project. The report added, "However, it is not the Committee's intent that the immediate securing and occupancy of the necessary rights-of-way shall operate to deprive the Indians of fair compensation for their lands. The Committee, therefore, directs the Secretary to negotiate with the Indians on the question of compensation." Provision was made for the Secretary's actions in the event of either success or failure in the negotiations.

On January 11, 1956, the Tribe adopted a resolution offering to transfer the tribal lands to the United States for five million dollars. The Secretary of the Interior considered the site to be worth approximately $1.5 million and by letter dated February 27, 1956, so advised the Chairman of the Senate Committee. On March 6, 1956, Senate Report 1626, 84th Cong., 2d sess., was published recommending passage of S.J. Res. 135 directing the Secretary to accept the offer from the Tribe to pay $5 million for the tribal land. S.J. Res. 135 passed the Congress and on June 7, 1956, was vetoed by President Eisenhower. The veto message stressed the fact that the amount involved seemed excessive. It said in part: "General principles of constitutional law exclude power site values in determining 'just compensation' as the Supreme Court recently reiterated in *United States* v. *Twin City Power Co.*, January 23, 1956."

After S.J. Res. 135, 84th Cong., 2d sess., was vetoed, it became necessary to institute condemnation proceedings. Former Senator Wheeler appeared as counsel for the Tribe and immediately questioned the Government's power to condemn Indian lands and also raised the question of whether or not just compensation for the taking of the tribal lands could reflect power site value. In opinions entitled *United States* v. *5,677.94 Acres of I and, etc.*, 152 F. Supp. 861 (D. Mont. 1957) and 162 F. Supp. 108 (D. Mont. 1958), the district court held that the Government had power to acquire tribal lands by condemnation and, in view of the Crow Allotment Act, that power site value could be included as a part of just compensation.

While the condemnation proceedings were pending, S.J. Res. 12, 85th Cong., 1st sess., 72 Stat. 361 was passed vesting title to the land in the United States and providing for the payment of $2.5 million, and reserving the right of the Indian Tribe to institute an action in the United States District Court for the District of Montana or the Court of Claims to determine whether an amount in addition to the $2.5 million was due as just compensation. (See S.Rept. 216, 85th Cong., 1st sess.) On the basis of this legislation, the condemnation action was dismissed and an action was instituted in the United States District Court for the District of Montana on May 1, 1959, by former Senator Wheeler and his firm to recover an additional payment of $5 million. After trial, the district court determined that the total just compensation due to the Indians was $4,500,000 and that the Indian Tribe was entitled to a judgment in the additional sum of $2 million plus interest from the date the lands were transferred to the defendant. Neither the Tribe nor the United States appealed.

Sincerely,

RICHARD G. KLEINDIENST,
Deputy Attorney General.

Senator **KENNEDY**. What about the Department's action in *Arizona* v. *California*? As I understand, November 2, 1953, Justice filed a petition of intervention on behalf of the United States asserting the rights to the use of water claimed in behalf of the Indians and the Indian tribes. As set forth in this petition they are prior and superior to the rights of use of water claimed by the parties in this cause. Within days the petition was withdrawn and replaced with one containing a new paragraph which failed to mention a priority of Indian rights.

Can you explain this one?

Mr. **KIECHEL**. Well, the petition for the adjudication of rights to the reservations of the Lower Colorado Basin included a prayer for water for irrigation only, the results for—were for water for a variety of purposes, including a reservation known as the Chemeheuvi Reservation, which was not included in that original petition and it resulted, I submit, in an adjudication, a decree by the Supreme Court of the United States of all of the water that was necessary for the irrigation of all of the irrigable acres of the mainstream reservations with a priority of the dates of creation of those respective reservations. And I submit, Mr. Chairman, that is a very good result for those several Indian reservations. It also is a very good result with respect to the precedential nature of the decision of the Supreme Court.

Senator KENNEDY. Why was the paragraph of that petition changed or dropped, do you know that?

Mr. KIECHEL. That was before my time. I do not know.

Senator KENNEDY. Just a couple of final questions. Of course, no doubt you have reviewed the testimony before the subcommittee indicating the fears of the Indian people on the *Eagle River* decision in the Supreme Court. Is it your opinion and the position of the Department of Justice that the rights and interest of American Indian tribes are in no way involved in or affected by or threatened by that decision?

Mr. KIECHEL. It is, Mr. Chairman.

Mr. MELICH. Mr. Chairman, we share the same opinion that Justice does with respect to that *Eagle River* case on that question.

Senator KENNEDY. Well, now, it does not affect Indians or Indian water rights to any extent?

Mr. MELICH. Not the reserved right doctrine. I think the Court in that case specifically mentioned that, and if any reserved right waters are involved those certainly will be properly taken care of by separate litigation.

Mr. KIECHEL. The fact is water district 37, and water division 5, that is, the areas of adjudication of the two adjudication proceedings which were brought to the Supreme Court of the United States, include no Indian lands, and no Indian water rights. There was, and there is, none within the limits of those two geographic areas. Upon the representation of the Indian tribes, and because of their concern, and out of, I should say, an abundance of caution, there was submitted in the Government's Supreme Court brief the notation that it was our view that the matter was not involved, and that that question was, in effect, reserved.

Now, as you know, Mr. Chairman, it is not within the authority or the ability of an advocate to inject an issue which is not within a case. That stems from the constitutional requirement that there be a case or controversy, that there be a justiciable issue. There are no Indian water rights involved in those two proceedings and, therefore, the Supreme Court decision has no effect upon it. It is a reserved question.

With respect to the concern of the downstream mainstream Colorado River Indian tribes, and the other mainstream Indian Reservations, I would refer you respectfully to the Supreme Court decree in *Arizona* v. *California* which sets out that entitlement, those entitlements, by priority and by quantity, and I would also respectfully invite your attention to the Colorado River Compact of 1922 by which the upstream States, the States of the Upper Colorado Basin, including the State of Colorado, are obliged, obligated, and lawfully required to deliver 7½ million acre-feet per year to the lower basin or 75 million acre-feet every 10 years. That is an obligation of the State of Colorado which exists and will continue to exist, and no State court adjudication within the State of Colorado can derogate from that requirement.

Senator KENNEDY. Of course, does that apply to Indians, the Colorado Compact?

Mr. **Kiechel.** The Colorado Compact which requires the upstream States to deliver water to the lower States certainly is for the benefit of the Indians. That insures a water supply against which this priority by date and amount for the Colorado Indian Reservation, and the Fort Mojave Reservation, the Chemeheuvi Reservation, all of which applies to their appropriation and their entitlement, applies to the water in the river.

Senator **Kennedy.** What about the other Indian reservations, outside of or within Colorado, Their rights to the use of water in the Colorado River system?

Mr. **Kiechel.** They were not adjudicated in the *Arizona* v. *California* case.

Senator **Kennedy.** Navajo Indians——

Mr. **Kiechel.** Except for the mainstream rights there were none on the mainstream, as I recall.

Senator **Kennedy.** Did they have any arguable rights in the Colorado River?

Mr. **Kiechel.** In the Colorado River?

Senator **Kennedy.** Yes, or tributaries, as they benefit from the tributaries or the Colorado. Do they have any rights to the river itself?

Mr. **Kiechel.** If they are on the tributary they have a right which applies to the tributary. If they are on the mainstream they have a right which applies to the mainstream, and the water therein, whether it arises from a tributary or solely from the mainstream.

Senator **Kennedy.** Is this a fair statement of your understanding of the situation that "no principle of that field of jurisprudence is more firmly established than that a right to use water must of necessity extend to and be enforceable to the very wellsprings of the source at which the right exists."

"A right to use water must, of necessity must, extend to and be enforceable to the very wellsprings of the source at which the right exists." Is that a fair understanding, is that your understanding of the right?

Mr. **Kiechel.** A water right is a usufructuary property right, and, if that is what that statement means, I do not have any disagreement with it, but I do not comprehend offhand, Mr. Chairman, what the significance of that statement is.

VEEDER MEMORANDUM ON "EAGLE RIVER" CASE

Senator **Kennedy.** Are you familiar with the memorandum that was prepared by Mr. Veeder on the conflict of interest in the proceedings before the Supreme Court?

(The memorandum appears in the appendix at p. 560.)

Mr. **Kiechel.** Yes, I read it.

Senator **Kennedy.** Do you have any general observations about it and the validity of his allegations?

Mr. **Kiechel.** No, not a general observation.

Senator **Kennedy.** Well, a nongeneral observation. [Laughter.] What do you want to say about it? Say something nice now, it is late in the afternoon.

Mr. **Kiechel.** I do not want to get involved in personalities.

Senator **Kennedy.** It is not a question of personalities. We are all professionals in this.

Mr. KIECHEL. That was a part of the brief filed.

Senator KENNEDY. The implications of these questions are going to be beyond those here after we pass into dust.

Mr. KIECHEL. That was a brief filed by the Colorado Indian Tribes after the decision, in fact, of the Supreme Court, and I was somewhat perplexed by the timing of their filing and I must admit I am even more perplexed by some of the substance of it.

Senator KENNEDY. Would you rather submit then to us a comment?

Mr. KIECHEL. No, I believe I have made clear, Mr. Chairman, my basic disagreement with the thesis of that brief which was that somehow the downstream Colorado River Reservations were affected and prejudiced by the Eagle County litigation. I disagree, and I have stated as forcefully as I could, that I do not believe that they are affected, and I do not believe that they can be affected for the reason that I stated.

Senator KENNEDY. If you were a lawyer on the other side of a case for an Indian tribe would you cite the *Eagle River* case as authority?

Mr. KIECHEL. For what proposition?

Senator KENNEDY. Well, that the State courts can adjudicate Indian water rights.

Mr. KIECHEL. I think it would be very difficult to do. The matter was submitted to the Supreme Court of the United States with the clear and express statement that Indian rights were not involved, and the Court in its opinion made no contrary statement. We have suggested in our statement, Mr. Chairman, that with respect to this matter of the applicability of State court adjudications under this consent statute, 43 U.S.C. 666, a solution to that matter would be the express amendment of the statute saying that it was not applicable to water rights held by Indians or Indian tribes, and that an alternative solution, which does not go quite as far, was to amend that statute to provide an express right of the United States to remove from the State courts in which those adjudications may be commenced to the Federal courts.

Senator KENNEDY. Are you getting the word out to the U.S. attorneys in the field about your feeling about the *Eagle River* case? I am reminded here that Mr. Sam Maynes of Colorado said at our earlier hearing: "Apparently the Attorney General is not getting the word down to field representatives of the Justice Department because of a conversation I had with the Justice Department Attorney in Denver two weeks ago. He stated unequivocally in his opinion the Eagle County case did apply to Indian water rights."

Mr. KIECHEL. Well, we work very closely with the U.S. attorneys and on matters of water rights and Indian water rights we maintain a centralized control of those, so I think the communications are quite adequate, Mr. Chairman.

Senator KENNEDY. Do you prepare any kind of analysis of Supreme Court decisions, for example, as they might relate to Indian rights?

Mr. KIECHEL. No.

Senator KENNEDY. So U.S. attorneys can be guided?

Mr. KIECHEL. No, it is only with respect to pending cases, Mr. Chairman. We apply the decisions or distinguish them, as the case may be, in other litigation.

Senator KENNEDY. Let us see if we can conclude in these next few minutes. I am wondering if we can all agree on the following proposition: That Indians be kept fully and currently informed as to the extent of their rights. Can we agree on that, that is something which is important, I suppose whether it involves a legislative proposition or the judiciary, or Interior, do you have any problem with that?

Mr. KIECHEL. Are you addressing that question to me, sir?

Senator KENNEDY. Yes, to all of you.

Mr. KIECHEL. Well, I certainly agree that is a desirable thing. I would, of course, say that the implementation of that is necessarily a function of the Interior Department.

Senator KENNEDY. Would you tell us, Mr. Loesch?

Mr. LOESCH. We have no argument with that at all, and as a matter of fact, I think the entire thrust of our administration is to involve the tribes and notify them and talk with them and make sure they understand what is going on in respect to their resources as well as other fields.

Mr. MELICH. Mr. Chairman, may I comment on this?

Senator KENNEDY. Yes.

Mr. MELICH. The few instances where I have noticed in my office some difference of opinion on communications it may result because the tribal leadership that we report to may not be in wholehearted agreement with the entire tribal membership, and some of the minority groups within that membership will oppose or take some action. Now, it is impossible for us, of course, to contact every individual, but we do contact the tribal leadership who are the spokesmen for the tribe.

Senator KENNEDY. How about that Indians be informed immediately and fully as soon as issues arise with Interior or in Justice or any other agency that Interior and Justice become aware of where there is a present or potential threat to Indian rights or resources? Does that make sense?

Mr. LOESCH. Yes, I am committed to that course.

Senator KENNEDY. Justice Department?

Mr. KIECHEL. I think that is very desirable.

Senator KENNEDY. When an actual or potential conflict of interest comes to the attention of anyone in Interior or Justice, the existence of the conflict would be disclosed to the Indian representatives, or an alternative method of proceeding be worked out between you and the Indians, whether in the selection of an agreed-upon member of your own agency who would be isolated and freed of other controls or restraint, or the obtaining of outside counsel at Government expense, whatever you work out.

Mr. KIECHEL. The only reservation that occurs to me offhand, Mr. Chairman, on that is on a matter pending in court. Of course, we would have an obligation as an officer of the court to make any conflict that became apparent to us in the representation known to the court in the first instance. But this is all, of course, hypothetical. I do not visualize the situation such as that, that you——

Senator KENNEDY. Would you feel an obligation to make the client aware of the conflict as well as the court where this was apparent?

Mr. KIECHEL. Yes, I am sure so; I also must raise, I suppose, what sounds like a picayune matter but, a matter of expense, I do not know, but this is something that all of us have to deal with when you—I think your question, as I understood it, or your statement referred also to providing other counsel.

Senator KENNEDY. Yes; that is one of them.

Mr. KIECHEL. Yes; that is something I would just point out.

Senator KENNEDY. Well, are there situations where the expense is the determining factor on whether the Justice Department is going to——

Mr. KIECHEL. I am not saying that. I am just saying we are not authorized or funded to go out——

Senator Kennedy. That is right.

Mr. KIECHEL (continuing). And provide litigation expense to others. We litigate for them, and that is the purpose for which we get our funds.

Senator KENNEDY. Do I understand earlier that, in terms of the Justice Department's responsibility toward the Indians, they will get as high a level of a protection that any trust relationship implies, that the advocacy on behalf of Indian interests will show the same kind of initiative, imagination, thoroughness, forcefulness that the Justice Department displays toward others?

Mr. KIECHEL. Indeed, sir, it is a very high priority with us, and we are prepared to bring cases and defend cases forthrightly on behalf of the Indians, and that is our endeavor.

Senator KENNEDY. Could I ask what your reaction is, given your present knowledge of Indian desires, to your touching base with the Indian community and whatever consultation with them that you undertake? Could you prepare for us by, say, the first of the year, a preliminary intended outline of your goals and priorities with the proposed time frame for each in terms of inventories and litigation, surveys, and other actions which you now conceive of as being necessary and appropriate to preserve and protect the Indian resources? Is that possible? This would give us an idea of the general target both on results and timing. Then all of us can see what the Indians and other interested parties think of it and come up with something more definitive by that time.

Mr. LOESCH. Mr. Chairman, I am not sure about the time. We talked awhile ago about the Indian Water Rights Office. That Office is just being organized. We have obtained our Director, we have two Associate Directors already on board, I believe, or at least coming on board through the civil service and other process. There are two remaining posts to be filled, in which Secretary Morton has taken a personal interest; and Mr. Walker, who is the Director, will be addressing himself forthwith, but whether he can get all the priorities set by January 1, I do not know.

Senator KENNEDY. Could you——

Mr. LOESCH. We can give you a list; yes.

Senator KENNEDY. Will you see what you can get for us?

Mr. LOESCH. For instance, we are setting a high priority, although we do not believe it—we do not believe that the Southern Ute Tribe which Mr. Maynes, who is an old friend of mine, that he represents, is affected by the *Eagle County* decision, we are still making a high priority of the inventory and investigation of the Southern Ute water rights at the tribe's request, and we can give you a list of that kind.

Senator KENNEDY. I think that would be, you know, I think it would be enormously useful and be helpful to us.

Mr. LOESCH. We will do that.

(The information referred to follows:)

ANSWER TO REQUEST FOR AN OUTLINE OF GOALS AND PRIORITIES WITH TIME FRAME FOR EACH LITIGATION INVENTORIES SURVEYS

The staff of the Indian Water Rights Office at present consists of the Director and one other staff member, detailed from another office in the Bureau. Other members have been recruited, but as yet, civil service processing is incomplete.

It is not feasible to make a comprehensive survey of the field of water rights in these circumstances. High priority, along with accomplishing the studies and litigation listed in response to an earlier request (page 413), has been given to ascertaining as soon as possible the extent of the task this office is charged with accomplishing.

Senator KENNEDY. I want to cooperate in every way, and I hope the Justice Department can cooperate.

I would like to perhaps submit just a few other kinds of questions to you relating to our interest, and I want to thank you very much for your appearance here. I know you are extremely interested in justice for the Indians, as we are. We realize the shortcomings of the Congress in many respects in fulfilling its responsibilities in these areas, in not acting more expeditiously on the Indian Trust Counsel bill and other programs, and all of us have, you know, some areas in which we could all do better. We are interested in trying to work with you and trying to find ways that all of us can fulfill our own responsibilities more adequately and better, and to try to show the first Americans that the system can meet its responsibilities and that the sacred trust which is so much a part of our responsibilities as a country is going to be something real and living. Hopefully, that will be one of the hallmarks of this administration. We will try to insure that it is, and hope that you can work with us to help us to do it.

I want to thank you very much. You have been extremely kind and patient.

The subcommittee will stand in recess.

Mr. LOESCH. Thank you, Mr. Chairman.

(Whereupon, at 4 p.m., the subcommittee was recessed.)

APPENDIXES

1. Submissions by agencies of the Federal Government in response to subcommittee inquiry

On September 20, 1971, the chairman of the Subcommittee on Administrative Practice and Procedure asked various agencies of the Federal Government to provide the subcommittee with a description of projects, programs, and activities affecting Indian land and water rights. The letter requesting this information and the agency replies follow.

(Note.—The response of the Bureau of Reclamation is reprinted in a later volume of these hearings, accompanying the transcript of the hearing of January 26, 1972, dealing specifically with reclamation activities.)

U.S. Senate,
Committee on the Judiciary,
Subcommittee on Administrative Practice and Procedure,
Washington, D.C., September 20, 1971.

To: National Park Service, Army Corps of Engineers, Bureau of Land Management, Bureau of Mines, Bureau of Reclamation, Bureau of Wildlife and Fisheries, and Forest Service.

Dear ———: The Subcommittee on Administrative Practice and Procedure is presently investigating the conflicts of interest in the Executive Branch which prevent fulfillment of the Government's trust obligation for Indian land and water rights. We are planning hearings on this subject next month and, in conjunction with this effort, would appreciate your assistance in identifying instances where the private interests of Indians in trust land and water rights are affected by actions or proposals of your bureau (service/corps).

It would be useful for the Subcommittee to have a brief description of the projects, programs, and activities of your bureau (service/corps) over the past five years which have affected or may affect Indian land and water rights. If a conflict over the project or activity arose, will you indicate whether that conflict was resolved or is involved presently in an administrative proceeding, a legal determination by the Solicitor or Attorney General, a judicial proceeding, or otherwise. The Subcommittee would like this information by October 15, 1971.

Thank you for your cooperation in this matter. If you have any questions please feel free to contact Thomas Susman, Assistant Counsel to the Subcommittee (225-5617).

Sincerely,

Edward M. Kennedy, *Chairman.*

U.S. Department of the Interior,
National Park Service,
Washington, D.C., October 21, 1971.

Hon. Edward M. Kennedy,
Chairman, Subcommittee on Administrative Practice and Procedure, Committee on the Judiciary, U.S. Senate, Washington, D.C.

Dear Senator Kennedy: In your letter of September 20 you asked for a brief description of the projects, programs, and activities of the National Park Service over the past 5 years which have affected or may affect Indian land and water rights.

We have been in communication with each of our Regional Offices and our Service Centers to obtain the above information. For your convience, we have consolidated their reports into the enclosed summary.

We are hopeful that the information provided will be of assistance.

Sincerely yours,

Raymond H. Freeman,
Acting Director.

Enclosure.

SUMMARY, PROGRAMS, AND ACTIVITIES OF THE NATIONAL PARK SERVICE WHICH HAVE AFFECTED OR WILL AFFECT INDIAN LAND AND WATER RIGHTS

Apostle Islands National Lakeshore, Wisconsin.—The Indians expressed considerable opposition in Senate and House hearings discussing the Apostle Islands National Lakeshore proposal. Both the Bad River Band and Red Cliff Band of Chippewas opposed inclusion of any of their lands within the Lakeshore. Public Law 91–424, September 26, 1970, establishing the Lakeshore, explicitly deleted all Indian lands, including trust lands, from the exterior boundaries of the Lakeshore. Thus, we see no area of conflict with this legislation.

Badlands National Monument, South Dakota.—With the consent of the Superintendent, Pine Ridge Agency, the National Park Service drilled four wells to supply the monument. A right-of-way easement for the wells and pipeline across Indian lands was purchased for $2,000 on July 30, 1968.

The Act of August 8, 1968 (Public Law 90–468) added approximately 133,300 acres of land within the Pine Ridge Indian Reservation to the Badlands National Monument. Real property acquisition and tenure adjustment which involves this Service is divided into two categories:

(a) A scenic easement on 59 Allotted and 12 Oglala Sioux Tribal tracts (11 "fee-owned" tracts are also involved). Depending upon design in the future, acquisition of road right-of-way may be required over a few of these tracts. Just compensation will be paid to all owners for the interest acquired All this land lies outside the boundary of the former U.S. Air Force Gunnery Range.

(b) A recreational park management easement on all Oglala Sioux Tribal land within the former gunnery range and monument addition, which will permit the United States to use the land for monument purposes. Grazing and other limited uses, as well as the right to mineral development (including oil and gas) will remain in the Tribe. This acquisition may be effected as part of an overall exchange involving Federal land:

(1) within the Monument and the former gunnery range in which park management rights will be reserved to the United States.

(2) Outside the Monument and within the former gunnery range.

(c) Approximately 3,115 acres of Tribal land within a portion of the gunnery range that is to be retained.

If consummated, the exchange will result in the Tribe owning all the land within the Monument addition (as well as certain land outside now owned by the U.S.) and it will result in the United States owning all the land in the retained gunnery range. Both parties would retain minerals.

Bighorn Canyon National Recreation Areas, Wyoming-Montana.—Pre-acquisition work has commenced in connection with the transpark road where it traverses the Crow Indian Reservation. The interest required is a 200-foot road right-of-way and a scenic easement one-fourth mile on either side. Eleven Allotted tracts are involved; just compensation will be paid for the interest acquired. These two interests will be acquired across Tribal land as provided by the 1957 agreement between the Crow Tribe and the Department.

As to the remaining Tribal land within Bighorn Canyon, the use for public recreation is authorized by the Memorandum of Agreement. Pretty Eagle road has been acquired over approximately 25 Allotted tracts.

Canyon de Chelly National Monument, Arizona.—By virtue of the Enabling Act establishing this monument, the National Park Service has responsibility only for preservation of archeological sites. The Service was not granted land management authority. The Navajo Tribe retains land ownership and receives benefits from concessioner fees. With permission of the Navajo Tribe the National Park Service has drilled a well and uses water produced therefrom. The Service has no water rights within the Monument.

Chaco National Monument, New Mexico.—A portion of a major prehistoric ruin (Penasco Blanco) within the existing boundary of the Monument is owned by a Navajo Indian. The National Park Service plans to acquire this land through exchange for other nearby grazing lands.

El Morro National Monument, New Mexico.—One of the three inholdings within the existing boundaries of this Monument is an Indian allotment of 158.8 acres. The National Park Service is working through the Bureau of Indian Affairs to effect an exchange or purchase to clear this piece of land. Which method will be used will depend upon the desires of the present landowners.

Everglades National Park, Florida.—There is no conflict with the Miccosukee Tribe on the northern boundary of Everglades National Park; however, their special situation is worthy of mention. For eight years a use permit has been in effect for the Miccosukee Tribe to use a strip of land and water 500 feet in width and six miles in length on the Tamiami Trail. This is for the administration and educational facilities, living quarters, and for making and selling of handicraft. The use permit is for a period of 50 years and requires no compensation.

Glen Canyon National Recreation Area, Arizona-Utah.—The National Park Service is working to obtain transfer of land at Antelope Creek (near Page, Arizona) from the Bureau of Reclamation to the Navajo Tribe. This exchange, when accomplished, will fulfill terms of a cooperative Memorandum of Agreement with the Navajo Tribe, dated May 8, 1962.

An agreement between the National Park Service and the Navajo Tribe is in effect concerning the use of federal lands lying between the surface elevation of Lake Powell and the 3270-foot contour. These lands were formerly part of the Navajo Reservation but exchanged for other lands under the Exchange Act of September 2, 1952.

Grand Canyon National Park, Arizona.—The current master plan proposal for for this park contemplates transfer of some lands within the park and monument to the Havasupai Indian Tribe since they hold long-term grazing permits on these lands. No land would be taken from the Tribe. Recently there have been proposals made by private, outside interests to obtain water from the Tribe to be pumped out of the Grand Canyon and across park lands. The Service has objected to this proposal. One of the earlier proposals for expansion of Grand Canyon National Park included a portion of the Hualapai Indian Reservation which is located within the park. This proposal is now dormant. The Hualapai Tribe resents the overlay of the Lake Mead Recreation Area boundary on land they consider theirs.

Great Smoky Mountains National Park, North Carolina-Tennessee.—During the year 1936, water was diverted from Mingus Creek within Great Smoky Mountains National Park for the use of the Eastern Band of Cherokee Indians living just south of the Park boundary. This water, right-of-way, and land for treatment facilities have been provided free of charge over the years by special use permit. On May 2, 1969, the Eastern Band of Cherokee Indians asked that certain changes be made in the permit so that they would be in a more beneficial position for a grant and loan from the Economic Development Administration. The funds were needed for an expansion of the system to new areas within the town of Cherokee, North Carolina. The National Park Service has agreed to comply with this request, and a new special use permit will be issued as soon as the construction plans are completed.

Hubbell Trading Post National Historic Site, Arizona.—A 3.6 acre tract of Indian land exists which we will *try* to trade for using excess land at Chaco Canyon.

Lassen Volcanic National Park, California.—In recent years the Indian Claims Commission ruled the Pitt River Indians had a financial interest in lands taken from them in the 1800's. Since they had not been compensated, a contemporary group of Pitt River Indians, and others, insisted that title to approximately 3½ million acres in Northern California was still retained by the Tribe. Included in this claimed area were lands in the Hat Creek drainage of Lassen Volcanic National Park.

In the early morning of June 4, 1970, an effort was made by approximately 150 Indians, and others, to take over a portion of the park and operate this area for their own benefit. This effort was repulsed by the National Park Service; the group then moved to their second objective, a nearby Pacific Gas & Electric Company campground. The Indian group occupied this site but was eventually removed by local law enforcement officers. Arrests were made. Trials were held in State courts with no final deposition. Other trials are still pending.

Locally, this land claim remains an issue although the park area has not been involved in further attempts by Indians to obstruct park operations. The Pacific Gas & Electric Company is trying to take the Indians into court so the court will establish that PG&E has a vested interest in the land claimed by the Indians. The possibility of further confrontation with local Indian groups, and their advisors, remains.

Marble Canyon National Monument, Arizona.—This Monument, which lies upstream from Grand Canyon National Park and adjacent thereto, was recently declared a National Monument by virtue of Presidential Proclamation. One of the current master plan proposals for Grand Canyon National Park would incorporate Marble Canyon within the national park and adjust the boundaries thereto. This boundary adjustment would include some Navajo lands between the Colorado River and the East Rim of Marble Canyon.

Mesa Verde National Park, Colorado.—The southern portion of Chapin Mesa which lies on Ute Mountain Indian Tribal lands adjacent to Mesa Verde National Park contains many important archeological sites. This land would be a valuable addition to the park if an exchange could be worked out with the Ute Mountain Indian Tribe. The National Park Service is encouraging the Utes to establish and operate an adjacent Mancos Canyon Tribal Park which would supplement the visitors' experience at Mesa Verde and provide income for the Tribe. At present no land acquisition proposal is under consideration.

Navajo National Monument, Arizona.—At Navajo National Monument the headquarters developments were constructed on Navajo lands through a cooperative Memorandum of Agreement with the Navajo Tribe dated May 8, 1962. By terms of this Agreement both the National Park Service and the Navajo Tribe agreed to lend support for legislation and the land exchange which would permit the Service to acquire ownership of the lands where our developments are placed.

Nez Perce National Historical Park, Idaho.—Approximately six allotted tracts and five Tribal tracts were included. Part have been purchased and part remain for subsequent purchase when and if additional monetary limitation becomes available.

Pipe Spring National Monument, Arizona.—At this area the Piute Indian Tribe, under an agreement dated June 9, 1924, was given a one-third share in water from the Pipe Springs. To operate its facilities at this area and accommodate both National Park Service employees and visitors to the area, it is necessary to retain the full flow of this spring for management purposes. We have therefore worked out a cooperative arrangement with the Piute Tribe whereby the National Park Service drilled a well on Indian lands and will, funds permitting, build a joint water system. We also anticipate under a cooperative arrangement joint land use for housing and a visitor center.

St. Croix National Scenic Riverway, Wisconsin.—On this Riverway, in the immediate vicinity of Danbury, Wisconsin, the St. Croix Band of Chippewas has a tiny reservation consisting of 136.81 acres. There has been no conflict with this Band regarding their holdings nor do we envision any problems in the future. We have been requested to provide planning assistance toward developing a campground-canoe-launching site and a possible motel development on these lands. To the extend that funds and manpower are available, we shall be most happy to cooperate. Throughout the rest of the 200 miles of the St. Croix and Namekagon Rivers, we are unaware of any Indian interests.

Wolf National Scenic Riverway, Wisconsin.—The Wild and Scenic Rivers Act, enacted by Congress on October 2, 1968, (Public Law 90–542) included within its purview under Section 2(a)(8) of the Act, the Wolf River situated in Minominee County, Wisconsin. In the instant case most of the lands proposed for the acquisition for this project are owned by Menominee Enterprises, Inc. This corporation is a tribal corporation, the shareholders of which are members of the Menominee Tribe who live in the area through which the Wolf River flows in Menominee County. The status of this particular organization, according to recent local newspaper articles, appears unique in that the Menominees apparently do not come within the purview of the Government's trust obligation for Indians. The Bureau of Indian Affairs appears to have no jurisdiction or responsibilities where the Indians who constitute the corporation are concerned. An additional point of interest reported in the same newspapers is the fact that a recent vote of the corporation's shareholders on a proposal to determine their willingness to sell their lands along the Wolf River to the National Park Service resulted in a 98.6 percentage rejection of the proposal.

Woodland Indian National Memorial, Michigan.—A task force report has very recently been submitted to the Director, National Park Service, and the Secretary of the Interior recommending consideration of the authorization of a Woodland Indian National Memorial to be located in Michigan's Lower Peninsula on the Lake Michigan Shoreline south of Charlevoix, Michigan. This proposal was developed during the past two years by joint effort of representatives of the National Park Service, the State of Michigan, the Inter-Tribal Council of Michigan Chippewa Indians and private industry. This project does not call for intrusion upon any known Indian-owned or Indian-trust lands, nor are Indian water rights involved. Rather, this project will add to the land base of the Chippewa Tribe if legislation is favorably enacted.

Wupatki National Monument, Arizona.—At the time Wupatki National Monument was established certain families of the Navajo Tribe were grazing on lands within the established boundaries. The Indian Claims Court has determined that the Navajos have no legal right to graze on this monument; however, the National Park Service believes the Navajo grazing on a limited basis can be incorporated in the interpretive theme for the area as part of our living history program. The head of the Navajo family who formerly grazed these lands passed away some time ago and we are working with the Navajo Tribal Council to select another Navajo who will be granted a special use permit for grazing privileges within the Monument.

Snaketown National Monument, Arizona (Hohokam-Pima).—There is now pending in Congress a proposal to establish a Snaketown National Monument on the Pima Indian Reservation to preserve outstanding archeological sites. This proposal has been planned over the years in cooperation with the Pima Indians and is compatible with the Tribe's plans for tourist development.

Zuni-Cibola, New Mexico.—The National Park Service has been working with the Zuni Indian Tribe in planning a proposal which calls for setting aside up to 100 acres at each of four important archeological sites within the Zuni Reservation. The Zuni Tribal Council endorses this proposal. These lands would probably be retained in Tribal ownership and managed by the Tribe with National Park Service assistance as a National Culture Park. On the other hand, it might prove more beneficial to the Tribe to have these lands managed by the National Park Service under an agreement, with preference for hiring of their Zuniemployees. On October 7, 1971, the Secretary's Advisory Board endorsed the Zuni-Cibola National Cultural Park.

DEPARTMENT OF THE ARMY,
OFFICE OF THE CHIEF OF ENGINEERS,
Washington, D.C., October 21, 1971.

Hon. EDWARD M. KENNEDY,
U.S. Senate,
Washington, D.C.

DEAR SENATOR KENNEDY: On behalf of General Clarke, I am replying to your letter of 20 September 1971 requesting information on the Corps of Engineers acquisition of Indian lands and water rights for civil works projects.

The attached list itemizes the projects and presents the pertinent data you requested.

Sincerely yours,

WILLIAM L. BARNES,
Colonel, Corps of Engineers,
Executive Director of Civil Works

Enclosure.

ACQUISITION OF INDIAN LANDS AND WATER RIGHTS, CIVIL WORKS PROJECTS

Project/location	Status	Acres	Real estate interest	Contested action	Remarks
Dworshak, Idaho	Under construction	4.66	Fee title	Condemned for title	
Bonneville Lake and Dam, (modified for Peaking) Columbia River, (Wash.–Oreg.).	do				No real estate action pending environmental impact statement.
Oxbow Lakes, Nebr. and Iowa	Not started	1,862.01	Fee title		No real estate action.
Kaw Lake, Okla	Under construction	1.78	do	Condemned for title	
Do	do	5.75	Fee title (cemetery)	do	
Do	do	1,385.11	Mineral subordination	do	
Webbers Falls Lake, Okla	99 percent complete	54.25	Fee title	do	
Galisteo Lake, N. Mex	Complete	120.02	Easement	Condemned for price	
Cochiti Lake, N. Mex	Under construction	4,069.00	do	None	
Kinzua Dam, Pa. and N.Y.	Complete	9,419.00	do	Condemned for title	
Do	do	741.00	Fee title	do	
Central and Southern Florida Flood Control District, Florida.	Under construction	769.07	Easement	Consented	
San Jacinto River and Bautista Creek Channel, Calif	Complete	295.62	Fee title	Condemned for price	Indians complained project would affect water rights downstream.
Do		19.97	Easement		
Tahquite Creek, Calif	Not started		do	Condemned for title	No real estate action as yet.
Santa Rosa Wash, Ariz	do	20,255.00	do		Real estate action pending.
Klamath River, local protection, Calif	Complete	2.00	Fee title	Condemned for price	
Do	do	54.00	Easements		
Painted Rock, Ariz	do	3,461.85	do	Condemned for title	

U.S. Department of the Interior,
Bureau of Land Management,
Washington, D.C., October 22, 1971.

Hon. Edward M. Kennedy,
U.S. Senate,
Washington, D.C.

Dear Senator Kennedy: This responds further to your letter of September 20 requesting information on projects, programs, or activities of this Bureau affecting Indian land and water rights.

We are not aware of any situations where our programs or activities have prevented fullfillment of the Government's trust obligations with respect to Indian land or water rights.

The enclosed detailed list indicates activities of the Bureau where we are cooperating with the Tribal authorities in defense of their lands or interests therein.

Sincerely yours,

Burt Silcock, *Director.*

1. Two sections of common-school land-grant lands claimed by the State of Utah. Decision in favor of the State and against the claim thereto by the Navajo Indian Tribe has been appealed by the Tribe and is now before the Board of Land Appeals, this Department (Utah 030009).

2. Under a March 12, 1970, memorandum from the Assistant Secretary, Public Land Management, to this Bureau and the Bureau of Indian Affairs, we are permitted to sell timber in Alaska under certain provisions. This Bureau can sell up to 10 MMBF of timber in Alaska, if the land is free of existing native claims. If the sale is disputed by a native group, it is normally dropped. If for compelling reasons timber should be cut, i e., salvage timber, this Bureau and the Bureau of Indian Affairs will file joint reports with the Secretary for final administrative determination. All timber sale receipts are carefully documented, should distribution of such funds be required under the Alaska Native Claims law.

3. At request of Bureau of Indian Affairs and Papago Indian Tribe, this Bureau is reviewing the validity of mining claims within the Papago Indian Reservation. The mining claims were considered valid on the initial investigation made in the early 1960's.

4. Application for a right-of-way for an irrigation reservoir; protest filed by Bureau of Indian Affairs Western Shoshone Sub-agency, claiming the water rights of the Indians are being endangered; Bureau of Reclamation protest filed on ground that reservoir would affect water rights and water supply for Owyhee Project; Field Solicitor, this Department, on behalf of Indians, filed protest with State of Idaho Department of Water Administration against approval of a water permit for storage. State Department of Water Administration has scheduled hearings on the request for the water permit for storage. Bureau of Land Management is withholding action on the right-of-way pending results of the hearing.

5. We are completing action on a three-year investigation of unpatented mining claims on the San Carlos Mineral Strip, Arizona. Investigation was undertaken on reimbursable basis for the San Carlos Apache Indians. No valid claims have been found, and several thousand unpatented claims have been canceled.

6. Surface ownership and grazing authorization on the San Carlos Mineral Strip has been restored to the San Carlos Apache Tribe. Ranchers formerly dealing with this Bureau now obtain their grazing authorization from tribal authorities.

7. This office has classified public domain lands adjacent to Colorado River Indian Reservation for recreation and public purposes and for State selections. Tribal Council has opposed these classifications on the ground that they will encourage development outside of and in competition with reservation developments. Review of the classification is now before the Secretary of the Interior.

8. Private land tract within Papago Indian Reservation was acquired by Federal Government in exchange initiated at request of private landowner and concurred in by Tribe.

9. Bureau public recreation plans on Colorado River at Yuma, Arizona, are clouded by land ownership claims of Quechan Indian Tribe. Lands at issue are leased by this Bureau to Tribe pending outcome of legislation introduced on behalf of Tribe.

10. Navajo Steam Plant on Navajo Indian Reservation and use of coal from Reservation necessitates construction of electric transmission lines across public domain lands. Transmission line may cross Navajo, Hualapai, and Kaibab Reservations. Details yet to be worked out with Tribes and Bureau of Indian Affairs.

11. By order of the Secretary of the Interior, the oil shale withdrawal was revoked as it pertained to Uintah-Ouray Indian Reservation lands in Utah. This removed all doubts as to the ownership of the lands and minerals, and they are now clearly in Tribal ownership. The enclosed press release of October 5, 1971, contains the text of Secretary Morton's remarks during a visit to the Uintah-Ouray Indian Reservation on October 5, 1971.

[Department of the Interior news release]

OFFICE OF THE SECRETARY

MORTON ISSUES NEW ORDER REVOKING 1930 OIL SHALE LANDS WITHDRAWAL AS APPLIED TO LANDS WITHIN UINTAH-OURAY RESERVATION

(Following is a statement delivered by Secretary of the Interior Rogers C. B. Morton during a visit to the Uintah-Ouray Indian Reservation in Utah Tuesday evening, October 5, 1971.)

I am very pleased to report to you that before I left Washington, a Secretarial Order was signed that revokes a 1930 oil shale withdrawal order as it pertained to your Indian lands.

Thus, we have erased any doubt that might have existed as to the Tribe's ownership of lands and minerals affected by the 1930 order.

I have instructed the Bureau of Land Management to note this action on their land records. In a few days, the new Secretarial Order will also appear in the *Federal Register* for public notice.

The problem cleared up by the new Order was complex. Let me explain it. In 1930 an Executive Order was issued that withdrew from disposal all the deposits of oil shale and the lands containing those deposits that are owned by the United States within the State of Utah and several other States.

Then, in 1945, the Secretary of the Interior restored to the Uintah and Ouray Tribe the undisposed of opened lands on the reservations, including some lands withdrawn by the 1930 order.

However, in the 1960's the Geological Survey issued an oil shale classification order that appeared to have a possible effect upon certain of the Indian lands restored to Indian ownership in 1945. The validity of the 1945 order, with respect to lands classified as oil shale lands, was in doubt. These included grazing reserve lands; timber reserve lands; over 200,000 acres of land and minerals restored to the Tribe in 1945; mineral rights for another 200,000 acres; and certain individual allotments.

Now the doubts are removed by my new order. There is no longer any question that these lands and minerals in question are in Tribal ownership.

U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF MINES,
Washington, D.C., September 29, 1971.

Hon. EDWARD M. KENNEDY,
U.S. Senate,
Washington, D.C.

DEAR SENATOR KENNEDY: This is in reply to your letter of September 20, 1971, requesting a description of Bureau of Mines projects, programs, and activities affecting Indian land and water rights, and, particularly, any instances in which conflicts of interest in the Executive Branch might prevent fulfillment of the Government's trust obligations for such land and water rights.

We are not aware of any instances in which Bureau of Mines activities conflict with the Government's trust obligations. As detailed below, these activities are designed with the Indians' benefits as the primary objective.

Bureau activities related to Indian lands are varied: In the Missouri River Basin, reports have been prepared following comprehensive mineral resource investigations of 22 Indian reservations. These reports have served the Bureau of Indian Affairs in answering inquiries from industry and private individuals concerning mineral resources on the reservations.

The Bureau of Mines also acts as a consultant on mineral matters to the Bureau of Indian Affairs. This activity has included numerous instances of recommending and advising action on leasing of mineral lands, setting of fees, etc. A recent example was Bureau evaluation of a copper deposit on the Papago Indian Reservation, Arizona. The study resulted in the establishment of a sliding-scale royalty on future copper production from the reservation; this should encourage industry investments while assuring an equitable return to the tribe.

The Bureau has, in the past few years, extinguished 43 coal outcrop fires on three Indian reservations in Arizona, Colorado, Montana and New Mexico. The fires were in coalbeds ranging from 3 to 30 feet in thickness which represented very definite economic assets to the Indians.

In addition to these specific studies, many Bureau of Mines investigations have been made in geographic areas which included Indian lands. Some examples include studies of oilfield characteristics and of strippable-coal deposits in Montana, North Dakota and Wyoming.

If we may be of further help, please let us know.

Sincerely yours,

E. F. Osborn, *Director*.

U.S. Department of the Interior,
Bureau of Sport Fisheries and Wildlife,
Washington, D.C.

Hon. Edward M. Kennedy,
U.S. Senate,
Washington, D.C.

Dear Senator Kennedy: This is in response to your letter requesting instances where the private rights of Indians in trust land and water rights have been affected by actions or proposals of this Bureau during the past five years.

Programs of this Bureau where we are working and/or dealing with the Indians concerning land and water rights are described in the following paragraphs.

TOPPENISH NATIONAL WILDLIFE REFUGE, WASHINGTON

This refuge was established with the acquisition of the first tract of land April 28, 1964. Its boundaries enclose three units with a combined total of 12,300 acres located within the Yakima Indian Reservation. Of this total, 1,300 acres are Indian tribal lands, 7,900 acres are Indian allotment lands, and the remaining 3,100 acres are privately owned lands. To date only 1,764 acres of privately owned lands have been acquired. The Indians, through their tribal council, have opposed the refuge and have refused to sell tribal lands to the United States for this purpose. No Indian allotment lands have been acquired since it is Departmental policy not to acquire such lands unless the approval of the tribal council has been given. The establishment of the refuge in this location, however, received wide support from the business community. We plan to continue to negotiate with the tribal council to gain their approval, without which we do not plan to acquire Indian land for the refuge. Some exchanges may be arranged to consolidate present refuge holdings.

HAVASU NATIONAL WILDLIFE REFUGE, CALIFORNIA AND ARIZONA

In the late 1930's the Metropolitan Water District of Los Angeles acquired lands along the Colorado River in California from the Chemehuevi Indians and in Arizona from the Fort Mohave Indians. The land was then turned over to the Department of the Interior for construction of the Parker Dam primarily for domestic water supply for the City of Los Angeles. After construction of the dam and reservoir, certain land and water acquired for the project was turned over to the Fish and Wildlife Service for administration of the Havasu National Wildlife Refuge.

The Chemehuevi Indians are now trying to regain control of a strip of refuge lands approximately 6 miles long located along the shore between the high water line and their own lands. We are working through the Regional Solicitor, Los Angeles, with the Chemehuevi Indians' attorneys to make some access sites to the lake (approximately 1½ miles of shore line) available to them through use permits. These negotiations are still being carried on.

The same type of situation exists for the Fort Mohave Indians in Arizona where they are trying to regain control of refuge lands extending to the shore of Topock Marsh. Recent investigations of the area have revealed the presence of approximately 1,900 acres of scattered Fort Mohave Indian land tracts within and adjacent to the Havasu Refuge boundary that lack access. Some are subject to flooding and others are too small for development. We are presently negotiating with the Fort Mohave Indians to solve this problem, primarily through an exchange of lands; however, no agreement has been reached with the Indians in these negotiations.

The projects listed above are the only ones we have that have resulted in conflicts. On the other hand, we have dealt with Indians on other projects within the past five years where no conflicts were present. These cases are as follows:

LAHONTAN NATIONAL FISH HATCHERY, NEVADA

In 1967 the Bureau requested, and was granted, a right to construct a diversion dam on the East Fork of Carson River on 1.61 acres of land of the Washoe Indian Tribe. This right was acquired to facilitate operation of the Lahontan hatchery which also furnishes fish to the Indian reservation.

KLAMATH FOREST NATIONAL WILDLIFE REFUGE, OREGON

In 1970 the Bureau made a sealed bid offer to buy a 1,168-acre property at Big Wocus Bay, Oregon, from the United States National Bank of Oregon as trustee for the Klamath Indian Tribe. The Bureau's offer, along with all others, was rejected and the property was not sold. There is now a question as to whether the land will be sold at all since some of the Indians are contesting the proposed sale action. If and when this is resolved and the property is again offered for sale we are still interested in acquiring it for the refuge.

OURAY NATIONAL WILDLIFE REFUGE, UTAH

The Bureau leases, for each cash rental, approximately 3,000 acres of Indian allotment land from Indians of the Ute Indian Tribe.

ALCHESAY NATIONAL FISH HATCHERY AND WILLIAMS CREEK NATIONAL FISH HATCHERY, ARIZONA

The Bureau leases water rights for the operation of these hatcheries from the White Mountain Apache Tribe.

MESCALERO NATIONAL FISH HATCHERY, NEW MEXICO

The Bureau leases water rights for the operation of this hatchery from the Mescalero Apache Tribe.

In our programs we have probably purchased privately held land from Indians, but we maintain no record of racial origin of landowners.

Sincerely yours,

M. A. Marston, *Assistant to the Director*.

U.S. Department of Agriculture,
Forest Service,
Washington, D.C., October 19, 1971.

Hon. Edward M. Kennedy,
U.S. Senate,
Washington, D.C.

Dear Senator Kennedy: Thank you for your September 20 letter requesting information on instances where the private interests of Indians in trust land and water rights were affected by actions of our agency within the last five years.

We have made a review of all actions involving Indian trust lands and water rights and have found no instances where our actions or proposals have affected the private interests of Indians in trust land and water rights.

Sincerely,

E. W. Schultz
(For Edward P. Cliff, Chief).

2. Memoranda and Related Materials from *Rincon Band of Mission Indians v. Escondido Mutual Water Co.* Concerning Obligation of the Attorney General Under 25 U.S.C. § 175

[Excerpt from Plaintiffs' Memorandum of Points and Authorities dated August 6, 1969]

VIII

Defendant Mitchell has, under applicable constitutional, statutory, and trust law, an obligation to represent plaintiffs in this lawsuit.

25 U.S.C. § 175 states:

> "In all States and Territories where there are Reservation or allotted Indians, the United States Attorney shall represent them in all suits at law and in equity."

The questions presented by this claim against the United States Attorney General are:

(1) Does 25 U.S.C. § 175 impose an obligation upon the United States Attorney to represent Indian Bands under any circumstances?

(2) If so, does the United States Attorney have such an obligation under the facts presented in the case at bar?

(3) If the answer to the first two questions is affirmative, does an Indian Band have the right to seek judical enforcement of the United States Attorney's obligation?

The Ninth Circuit Court of Appeals has stated that the purpose of 25 U.S.C. § 175 is "to insure the Indians adequate representation in suits to which they might be parties." *Siniscal* v. *United States*, 208 F. 2d 406, 410, *cert. denied* 348 U.S. 818. In that case an Indian claimed that a judgment could not stand against her because the United States Attorney had not represented her. The judgment was upheld since she was found to be acting not in her status as an Indian in the transaction which was the subject of the lawsuit, but as a "straw-man" agent of a non-Indian who was secretly purchasing Indian property. In addition, the United States Attorney was already acting as attorney for the Indian sellers of the land in prosecuting the action and clearly could not represent both sides. The Ninth Circuit stated:

> Since the suit against Siniscal and Reed was prosecuted by the United States Attorney, it is obvious he could not represent them. Congress must have considered such a situation. We think 25 U.S.C. § 175 is not mandatory and that its purpose is no more than to insure the Indians adequate representation in suits to which they might be parties. These Indians are citizens of the United States by the Act of June 2, 1925, 43 Stat. 253. They are sued as persons acting individually and not with reference to any right in which the United States or any officer thereof is in the position of a trustee or guardian. They were ably represented by counsel. It is not a situation requiring for them a guardian ad litem." 208 F. 2d at 410.

Clearly, the court qualified its belief in the non-applicability of the section by reference to the capacity in which the Indians are parties to an action. In essence, far from interpreting section 175 as completely discretionary, the court carved out a very narrow, limited and logical exception to the cases covered by the section's mandatory language.

In the case at bar, the whole thrust of the suit is exactly the opposite, with the Indians suing to protect their rights to property held in trust by the United States for their sole use and benefit. In addition, far from being an adverse party, the United States has contended before the Indian Claims Commission (Docket 80–A) that it is desirable, indeed it is essential, for there to be an adjudication of the Plaintiffs' rights as against the adverse claims of the Defendant Water Company. (Complaint, paragraph 181). The government has argued that this adjudication is a condition precedent to the determination of the Plaintiffs' Docket 80–A claims. The United States has therefore left the Plaintiffs literally with no alternative but to seek a determination of the claims presented in this action. Yet the United States has thus far ignored the repeated and urgent pleas of the Plaintiffs that the government initiate this lawsuit promptly. Government officials have turned a deaf ear in spite of Plaintiffs' repeated warnings that continued delay would certainly result in irreparable injury to the Plaintiffs arising out of the prospective sale of virtually all of the assets of the Defendant Water Company to the Defendant City of Escondido. These Officials have never contradicted Plaintiffs' contentions that action should be taken prior to the sale of Defendant Water Company's assets to the Defendant City of Escondido but have maintained that the United States would not be able to take prompt decisive action.

25 U.S.C. § 175 only makes sense if it is interpreted as imposing, under some circumstances, an obligation upon the United States Attorney to represent Indians or Indian tribes or bands. In *Siniscal* the Ninth Circuit held that the statute was intended to protect Indians by insuring them adequate representation in suits to which they might be parties. Nevertheless, the cases recognize that Congress did not intend that the United States Attorney would be obligated to represent Indians in all cases. The ethics of his profession and the United States Government's fiduciary obligations to administer trust property for the "sole use and benefit" of the Indian beneficiaries clearly preclude representation of both an Indian plaintiff and an Indian defendant in the same claim. On the other hand, the statute would be meaningless if it is construed to vest in the United States Attorney an absolute and unreviewable right to refuse to provide adequate legal representation to Indians who have a legitimate call on his services.

Prior to the passage of section 175, the United States Attorney could and did initiate or defend legal actions on behalf of an Indian individual, tribe or band. See, *e.g., United States* v. *43 Gallons of Whiskey,* 93 U.S. 947 (1876); *Leavenworth, L & G Railroad Company* v. *United States,* 92 U.S. 733 (1876); *Missouri, Kansas and Texas R.R. Co.* v. *United States,* 92 U.S. 645 (1876). Following the rule of statutory construction that every provision in a statute should be interpreted in a meaningful way, not as useless, ineffective, redundant or mere surplusage. *Bird* v. *United States,* 187 U.S. 118 at 124 (1902); *Knapczyk* v. *Ribicoff,* 201 F. Supp. 283 (N.D. Ill. 1962); *United States* v. *Waughten,* 195 F. Supp. 157 (N.D. Cal. 1961); In *re West Coast Cabinet Works,* 92 F. Supp. 636 (S.D. Cal. 1950); *aff'd. Cal. State Board of Equalization* v. *Goggin,* 191 F. 2d 726 (9th Cir. 1951), *cert. denied* 342 U.S. 909 (1952); section 175 only makes sense if it is read to impose an additional legal obligation on the United States Attorney over and above his preexisting discretionary right to represent Indians whom he saw fit to represent. In other words, for section 175 to mean anything, Congress must have intended to impose an obligation upon the United States Attorney to represent Indians in certain legal actions.

The legislative history confirms this logical interpretation of Section 175. The section was proposed and adopted by the House following a discussion of a provision in the Appropriations Act of 1893 asking for funds to enable the Secretary of the Interior to pay the legal costs incurred by Indians in contests initiated by or against them relating to their claims to public lands. Congressional Record, House, February 24, 1893, p. 2132.

Congressman Peel stated:

> In making allotments to Indians, we are obligated by our treaties and the acts of Congress in pursuance of the treaties to deliver them the deeds free of incumbrance within twenty-five years, securing to them the full title to their allotments. . . .
>
> The Government can not expect that the defendants, these people over whom we assume guardianship as the wards of the nation, and to whom we undertake to allot lands, are compelled to protect their own titles. The Government undertakes to furnish them the titles, and must protect them.

Congressman Bowers argued against and moved to strike the appropriation on the grounds that he had tried and failed to pass an amendment asking for funds to pay the Attorney General to defend the titles of certain white settlers on public lands held under United States patents. He went on to say:

> I find in this bill a provision where they [the United States] *must* defend the title of the Indian lands, and pay the expenses, while we can not do it for the white man's lands to whom we have sold our property and taken his money for it, and given him no title.
>
> You are under the same moral obligations, Mr. Chairman, to the white settlers whose money you have taken, as to the Indians to whom you have allotted land. (Emphasis added).

Congressman PEEL. Are these white men you speak of wards of the nation?

Congressman Bowers. They do not stand as good a show in this House, I think, as wards of the nation. I tell you if it is right to protect the title to the Indians lands, *and to order the Attorney General to appear for them in cases where the title of the lands they claim is brought into question*, it is proper that you should defend and appear for the settlers whose money you have taken and to whom you have granted United States patents. (Emphasis added)

Congressman Peel. The two cases are very dissimilar. . . . [W]here the land of the wards of the nation are involved *we are under a legal obligation*. (Emphasis added).

Congress Holman, obviously persuaded by Congressman Peel's arguments, then proposed that inasmuch as the proposed appropriations would be a mere nominal sum and since the actual expense would be considerable, it would be better to forget the appropriation and substitute the following words in the statute:

> In all the States and Territories where there are reservation or allotted Indians, the United States District Attorney shall represent them in all suits at law and in equity.

There was then some concern expressed that if the amendment were adopted, the United States Attorney might find himself with a conflict of interest.

Congressman Holman. It has been suggested that there would be a conflict of interest. The gentlemen who made the suggestion must bear in mind that this refers to suits at law and in equity, and not to prosecutions.

The House then rejected Congressman Bowers' amendment to strike the appropriation and adopted Congressman Holman's amendment (now section 175) as an additional proviso.

This history shows without a doubt that both the proponents and opponents of section 175 fully understood that if the proposed bill were adopted, the United States Attorney would have a legal obligation to appear in behalf of an individual Indian or an Indian tribe where title to Indian property is questioned. Congressman Bowers' opposition was based upon his notion that the United States Attorney owed no more of an obligation to trust Indians than he did to white settlers. The House rejected this view and voted to impose the special obligation with respect to trust Indians. If section 175 was not intended to impose a special obligation on the United States Attorney to represent trust Indians in cases relating to trust property, Congressman Bowers' opposition makes no sense. If Congress intended the United States Attorney to be completely free to make up his mind whether or not to represent trust Indians in cases relating to trust property (as he was prior to enactment of section 175, see cases cited above), the Indians would not be the beneficiaries of the favored treatment Congressman Bowers found objectionable in the bill. Obviously, both sides fully understood the impact of the section. Those who favored imposing the legal obligation on the United States Attorney prevailed.

The dialogue concerning the United States Attorney's possible conflict of interest indicates that Congress intended to restrict severely the United States Attorney's discretion. If the decision whether to appear in behalf of trust Indians was completely discretionary, there would be no need to worry about the conflict problem because it could be so easily avoided.

Finally, the only contemporaneous interpretation of section 175 lends further support to this construction. On November 23, 1897, Assistant Attorney General Van Devanter issued an opinion responding to the Commissioner of Indian Affairs' inquiry as to whether the Miami Indians of Indiana were entitled to the services of the United States Attorney under section 175. 25 I.D. 426. The Miami Indians were anxious to litigate the question of whether the State of Indiana had unlawfully levied taxes upon their lands.

Assistant Attorney General Van Devanter's opinion first sets forth the history of the Miami Indians in some detail and then refers to the legislative history recounted above. The opinion then states:

> It might be argued from the connection in which the provision is found that it was intended that the Indian should be represented in only such actions as arise under the laws relating to the public lands; but this would be a narrow, if not a strained construction of the language used. The language is broad and comprehensive enough to include all actions to which an Indian coming within its terms is a party, and under the rule that laws relating to the Indians are to be liberally construed in their favor, this provision (i.e. § 175) should be held to include all such actions. 25 I.D. at 430.

The opinion then goes on to hold that the Miami Indians are not entitled to the services of the United States Attorney because they are neither Reservation nor allotted Indians. The opinion states, however, that section 175 was intended "to afford the Indian due protection during the period in which the United States continued to exercise control over the land as trustee." Even more importantly, the opinion does not even question the assumption that if the Miami Indians did qualify as either reservation or allotted, they would be entitled to the services of the United States Attorney. The language of the statute and its legislative history leave no doubt on that score.

The canon of construction on which the Assistant Attorney General relies, namely, that laws relating to Indians are to be liberally construed in their favor, is deeply rooted in this country's relationship to a dependent people. It has been followed in many cases, including, *e.g., Alaska Pacific Fisheries Co.* v. *United States,* 248 U.S. 78 at 89 (1918); *Starr* v. *Long Jim,* 227 U.S. 13 at 623 (1913); *Choate* v. *Trapp,* 224 U.S. 665 at 675 (1912); *Arenas* v. *Preston,* 181 F. 2d 62 (9th Cir. 1950), *cert. denied United States* v. *Preston,* 340 U.S. 819 (1950); *Elser* v. *Gil Net No. One,* 246 F. 2d 30 (1966).

If ever circumstances exist in which Indians are entitled to the protection of section 175, they are presented in the case at bar. Of course, the Rincon and La Jolla Indians are Reservation Indians. This proceeding concerns property held in trust by the United States of America for the Plaintiffs' sole use and benefit. The United States is not an adverse party. Secretary of the Interior Hickel and Attorney General Mitchell are named as defendants only because the United States was unwilling to join Rincon and La Jolla as Plaintiffs at the time this lawsuit was commenced. There is nothing preventing the United States from joining as a Plaintiff in this action.

On many previous occasions the United States has initiated legal action on behalf of an individual trust Indian or an Indian tribe to correct situations occasioned, in whole or in part, by the fault of the government officers. See especially *United States* v. *Ahtanum Irrigation District,* 236 F. 2d 321 (9th Cir. 1956), *cert. denied* 352 U.S. 988 (1957), and 330 F. 2d 897 (9th Cir. 1964), *cert. denied* 381 U.S. 924 (1965) where the United States brought suit on behalf of the Yakima Tribe to invalidate an unconscionable agreement entered into in 1908 by the Secretary of the Interior's agent which purported to grant nonIndians' rights of occupancy. See also, *United States* v. *Waller,* 243 U.S. 452 (1917) and *Heckman* v. *United States,* 224 U.S. 413 (1912) where the United State brought suits to cancel conveyances executed by Indians, and *United States* v. *West,* 232 F. 2d 694 (9th Cir. 1956), *cert denied* 352 U.S. 834 (1956), where the United States brought suit to enjoin a continuing trespass upon certain Indian grazing lands notwithstanding the permission gratuitously granted by the government employed Superintendent of the Reservation. The United States has also brought suit to render the unauthorized acts of Government employees ineffective when such employees have purported to grant property rights belonging to the nation. See, *e.g., United States* v. *California,* 332 U.S. 19 at 39 (1947) and *Utah Power and Light Co.* v. *United States,* 243 U.S. 389 at 408–9 (1917).

The United States Assistant Attorney General for Lands and Natural Resources has, in the course of another proceeding related to identical facts, stated the government's position that the issues presented in the case at bar must be adjudicated. Plaintiffs have filed a claim against the United States of America, entitled *Baron Long et. al.* v. *United States,* designated Docket 80–A, which is now pending before the Indian Claims Commission. In this action, Plaintiffs Rincon and La Jolla and others have alleged that the United States has, through acts of omission and commission, failed adequately to protect Plaintiffs' water rights and water supply. Plaintiffs have sought compensation for the damages resulting from these alleged failures on the part of the government.

In defense, the Assistant Attorney General has argued that it is neither possible nor desirable to determine whether Plaintiffs have been damaged by the acts or omissions of the United States, and if they were damaged, its extent, without a prior determination of the Plaintiffs' water rights as against the Defendant Water Company and the liability of the Defendant Water Company to the Plaintiffs for damages. (Complaint; paragraph 181). The Government's brief states this position in a most forthright manner:

> The extent of petitioners' [Plaintiffs'] several water rights cannot be determined without bringing other parties [Defendant Water Company] into court (impossible before the Indian Claims Commission), yet whether any damage has occurred much less its measurement, cannot be ascertained without a determination of these rights. Similarly, damages cannot be ascertained without knowing the extent of others' [Defendant Water Company's] water rights and without finding out which, if any, of the alleged losses are irrecoverable against third parties. These are beyond the scope of the Commis-

> sion's powers. Defendant's Requested Findings of Fact, Objections to Petitioners' Proposed Findings of Fact and Brief, p. 198.
>
> It is impossible for [Plaintiffs] in this action before this Commission to establish the necessary facts to substantiate their claims. Nor is it desirable for them to do so. A determination by this Commission which attempted to define petitioners' [Plaintiffs'] water rights either before or after their alleged loss could, of course, gain petitioners no particular quantity of water since it would not be binding on a court of general jurisdiction or on the third parties [Defendant Water Company] against whom it would have to be asserted. A money judgment based upon a determination that some portion of their theoretical water rights has been irretrievably lost could redound to their disadvantage, for any award in damages might be considered as in lieu of or as compensation for rights which the several bands or the United States might wish to assert at some future time. (*Ibid.*, pp. 206–7.)

In essence, the United States, having failed to bring suit to protect the Plaintiffs' water rights for the past seventy-five years, relies on that failure as a defense to the Plaintiffs' Docket 80–A claims. Having so persuasively argued for the necessity of determining the issues presented in this proceeding, the United States Attorney General is in no position to refuse to represent Plaintiffs in this action.

If section 175 is held to impose an obligation upon the United States Attorney to represent Plaintiffs in this lawsuit, it follows that Plaintiffs can bring suit to compel performance of the obligation owed to them. In two recent cases, the Supreme Court has held that a federal statute passed to protect a class of citizens, although not specifically authorizing members of the protected class to institute suit, nevertheless implied a private right of action. *Allen* v. *Board of Elections*, 22 L.Ed. 2d 1 (1969); *J. I. Case* v. *Borak*, 377 U.S. 426 (1964).

The statutes construed in these cases, unlike section 175, provided their own enforcement scheme which did not include the private right of action. However, even in these circumstances, the Supreme Court implied the availability of such judicial relief where necessary to achieve the statutory purpose. In the absence of a private right of action, the Court noted, the statutory guarantee might well prove an "empty promise". *Allen* v. *Board of Elections*, 22 L.Ed.2d at 12.

Plaintiffs' experience since the enactment of section 175 demonstrates just how empty a Congressional commitment of Executive services to the Indian wards can be without judicial enforcement. They have, during the past ten months, repeatedly and urgently requested the United States to initiate these legal proceedings on their behalf. (Complaint; paragraph 183; Affidavit; paragraphs 10–19). Further delay admittedly threatens irreparable injury but the United States still maintains its silence in spite of its stated position in defense to the Plaintiffs' Docket 80–A Claims that this action must be adjudicated. The circumstances here present a case which cries out for judicial relief from the Executive's failure to respond to the urgent and just pleas of its wards.

To summarize Plaintiffs' position as against Defendant Mitchell:

(1) Logic, legislative history, and relevant case law require that 25 U.S.C. § 175 be construed to impose an obligation upon the United States Attorney to represent trust Indians in certain circumstances;

(2) Plaintiffs are entitled to be represented by the United States Attorney in the circumstances presented in case at bar; and

(3) Plaintiffs are entitled to judicial enforcement of the United States Attorney's obligation to represent them in this proceeding.

IX

The United States, as the trustee of Indian assets, owes a fiduciary duty to plaintiffs.

The cases make it clear that the United States Government has assumed distinctive obligations of trust in its dealings with Indian people. These are "moral obligations of the highest responsibility and trust."

[Excerpt from Memorandum of Points and Authorities (Supplemental) dated October 15, 1969]

CONCERNING THE REPRESENTATION OF THE INDIAN PLAINTIFFS

Title 25 U.S.C. Sections 81–85 do not create or confer any rights or privileges in defendants City of Escondido and/or Escondido Mutual Water Company. Therefore defendants City of Escondido and Escondido Mutual Water Company have no standing to raise any question as to the authority of plaintiffs' attorneys to represent them in this action. *Fallbrook Public Utility District. v. United States Dist. Court*, 202 F. 2d 942 (9th Cir. 1953).

III

The United States Attorney General should be compelled to represent the plaintiffs in this proceeding.

In an address to the National Congress of American Indians on October 8, 1969 in Albuquerque, New Mexico, the Vice President of the United States set forth the Administration's view of the trust relationship that exists between the United States and its Indian wards. He stated:

> Indian tribes possess a unique and direct relationship with the Federal government which is derived from several sources. First, it is a legal relationship. Through treaty and law, Indian communities are entitled to certain services from the Federal government.
>
> As a result of the treaties, the Indian people surrendered their land to the Federal government under certain inviolable conditions of trust and good faith. The government undertook a sacred trust to finance basic programs such as health and education. In attempting to respond to their obligation, Congress has enacted much legislation affecting Indians. . . .
>
> It is important to remember that Federal support of Indian services is, to a great extent, legally, due the Indian community. These are not services offered at the pleasure of the government but solemn obligations to a people who accepted a good faith settlement in reliance on government integrity.

Just one week earlier the United States Department of Justice filed its Memorandum of Points and Authorities in opposition to the order to show cause why the Attorney General should not be compelled to represent the plaintiffs in this proceeding. The Department essentially takes the position that they have unfettered discretion to take or not to take any action in response to the plaintiffs' requests that their water rights be protected and that their claims against defendant Escondido Mutual Water Company be determined (Memorandum in opposition, p. 5). In other words, the Department of Justice has adopted the very position the Vice President of the United States explicitly rejected, that government services to Indians are offered at the pleasure of the United States, that the duty of the Attorney General to provide legal representation to plaintiffs is "purely discretionary" (Memorandum in opposition, p. 9).

There can be no more fundamental obligation of the trustee than the duty to provide legal services to protect the corpus of the trust. *Metzenbaum v. Metzenbaum,* 115 Cal.App.2d 395, 252 P.2d 31 at 34 (1953). If such services are not "legally due" the Indian community, it is impossible to conceive of services that are. The mandatory and broad scope of the language of 25 U.S.C. Section 175, "In *all* States and Territories where there are *reservations or allotted* Indians the United States attorney *shall* represent them in *all* suits *at law and in equity,*" taken together with the floor debate at the time Section 175 was enacted (plaintiffs' memorandum, pp. 10–13) reinforce the overriding principle that Indian tribes are entitled to government services in return for a good faith settlement of their claims and in reliance on governmental integrity. See *Williams v. Lee*, 358 U.S. 217 at 218 (1959), and *Delaware Tribe of Indians v. United States,* 21 Ind. Cl. Comm. 18 (1969).

In their memorandum (pp. 2–4), the United States cites certain legislative history to support its apparent interpretation of Section 175 that it was intended as an economy measure to avoid the expenditure of funds for private attorneys in contests over Indian homesteads and allotments on public lands where a United States Attorney was available to represent the Indians. In so arguing, the government is directly controverting the contemporaneous November 23, 1897 opinion of the Assistant Attorney General. 25 I.D. 426 (see plaintiffs' memorandum, pp. 13–14). The Assistant Attorney General specifically considered the legislative history cited by the government but rejected its possible implications as "a narrow, if not a strained construction of the language used." The opinion concluded that Section 175 applied to all actions brought by reservation or allotted Indians which concerned trust property.

Even if Section 175 is not construed as mandatory, it is clear that Indians who are denied representation are entitled to judicial review of the government's decision. Judicial review is not expressly precluded by statute (see 5. U.S.C. Section 701), and therefore will not be cut off unless there is persuasive reason to believe that such was the purpose of Congress. *Abbott Laboratories v. Gardner,* 387 U.S. 136 at 140, 18 L.Ed.2d 681 at 686 (1967). See also *Powelton Civic Home Own. Ass'n. v. Department of H. & U. Dev.*, 284 F.Supp. 809 (E. D. Penn. 1968).

Nor will judicial review be denied because the Attorney General still claims to be considering what action, if any, should be initiated by the United States (Memorandum in opposition, p. 5). 5. U.S.C. Section 706 provides that the reviewing court shall "compel agency action unlawfully withheld or unreasonably delayed." Plaintiffs' Exhibits 5, 6, 8, 9, 10, 11, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30 clearly demonstrate (a) that officers of the United States have been aware, at least since April 4, 1925, that plaintiffs have suffered severe damages as a result of the failure of the Escondido Mutual Water Company to deliver the water to which Rincon was entitled, (b) that officers of the United States realized that existing arrangements for the delivery of water were inadequate and difficult to enforce, (c) that officers of the United States have, at various times, acknowledged that something could and should be done to modify the existing arrangements for the delivery of water, and (d) that the United States has failed to respond satisfactorily to the requests of Indians and their representatives that corrective action be taken. The situation has deteriorated drastically since April 4, 1925 while the government has stood by, sometimes watching, sometimes not. "When a party suffers a legal wrong from continuing agency delay and . . . there is no other adequate administrative or judicial remedy, the delay is final administrative action for which Section 10 of the Administrative Procedure Act does provide an effective remedy." *Deering Milliken Inc.* v. *Johnston*, 295 F.2d 856 (4th Cir. 1961).

The government has argued that the plaintiffs have authority to bring an action on their own behalf. This contention was considered and rejected by the Supreme Court in *United States* v. *Creek Nation*, 295 U.S. 103, 79 L.Ed. 1331 (1935) in which the Creek Nation brought suit against the United States to recover compensation for certain lands of the tribe appropriated by the United States. The Supreme Court stated:

> True, the tribe, if free and prepared to proceed in its own behalf, might have successfully assailed the disposals, but it was not in a position where it could be expected to assume that burden. It was in a state of tutelage and entitled to rely on the United States, its guardian, for needed protection of its interests. 295 U.S. at 110, 79 L.Ed. at 135.

In *The Tlingit and Haida Indians of Alaska v. United States*, 20 Ind. Cl. Comm. 508 (1969), the Indian Claims Commission held that "at the least the government had an obligation to protect the [Indian] petitioners in their exercise of their right of capture" of the fish on which their subsistence depended. 20 Ind. Cl. Comm. at 511. By making it possible for white settlers, miners, traders and businessmen to legally deprive the Tlingit and Haida Indians of their use of the fishing areas, their hunting and gathering grounds, and their timber lands, the government violated its trusteeship obligations.

Similarly, in the case at bar, plaintiffs have alleged and proved that action and inaction on the part of the United States have effected a taking of their invaluable supply of water for the past seventy-five years. The government's own reports and inter-office correspondence confirm the plaintiffs' allegations. (See, e.g., plaintiffs' Exhibits 3, 4, 5, 6, 9, 10, 11, 13, 14, 15, 16, 18, 19, and 23 through 30.) When confronted with the history of abuse in this case, the government's request for a further indefinite period in which to decide what, if any, corrective action it will take exhibits a total lack of concern for the rights of its wards. While the Departments of Interior and Justice have been "investigating and evaluating the desirability of various possible alternatives for the protection of the Plaintiffs' water rights" for the past seventy-five years, the corpus of the trust has been wasting. The record could not be clearer. Further indefinite delay cannot be tolerated. The failure of the Attorney General to take immediate appropriate action on the plaintiffs' behalf is arbitrary, capricious and constitutes an abuse of discretion, if indeed he is vested with any discretion at all.

One final matter requires clarification. The record in this case clearly reveals that the plaintiffs have taken extraordinary steps to enlist the assistance of the United States. Plaintiffs' attorneys have, on several occasions, offered to work with government attorneys in determining the most appropriate and effective means of protecting plaintiffs' water rights and of recovering compensation for past damages. The government failed to respond. Finally, when government attorneys admitted to plaintiffs' attorneys that irreparable injury would result unless suit was filed immediately, plaintiffs initiated this proceeding and obtained the temporary restraining order that has prevented the transfer of the Escondido Mutual Water Company's assets to the City of Escondido.

Plaintiffs have not prepared a pleading for the United States to sign. They are willing, indeed anxious, to consult with their trustee to determine the proper course. If it appears that the complaint in this proceeding can be improved upon, it can be amended. Further, it is possible for the trustee and the ward to argue somewhat different positions in the same proceeding or in two separate actions consolidated for trial. See, e.g., *Sohappy v. Smith*, United States District Court for the District of Oregon, Civil Nos. 68–409 and 68–513. In short, contrary to the groundless assertions of the government, plaintiffs remain flexible and seek only to reverse the course of the past seventy-five years by enlisting their trustee's resources on their behalf.

* * * * * * *

[Excerpt from Plaintiffs' Second Supplemental Memorandum of Points and Authorities dated October 27, 1969]

II

The Justice Department has consistently interpreted 25 U.S.C. § 175 as requiring representation of reservation and/or allotted Indians in all suits at law and equity involving trust or restricted assets.

During the course of the hearing on October 15, 1969, the court indicated that it was considering a construction of 25 U.S.C. § 175 that would distinguish between the United States attorney suing in the name of reservation of allotted Indian plaintiffs on the one hand and suing in the name of the United States on the other. At the time, plaintiffs' attorneys indicated that, to their knowledge, this distinction had not previously been articulated.

Additional research has disclosed that the Department of Justice attorneys have brought suit in the name of reservation or allotted Indians, but only in cases in which the United States does not have an interest. This information is contained in the Department of the Interior publication entitled *Federal Indian Law*, 1958 edition, reprinted by Oceana Publications of Dobbs Ferry, New York in 1966, which relies heavily upon material in Justice Department files. In its discussion of 25 U.S.C. S 175, *Federal Indian Law* first notes that the section did not appear in the 1952 edition of the United States Code, which helps to explain the relative scarcity of references to it in the case law (p. 304). Next, Section 175 is presented in the context in which it was adopted by the House, as the last sentence in a paragraph dealing with the public lands. *Federal Indian Law* then considers the impact, if any, of this aspect of Section 175's legislative history and goes on to discuss the Justice Department's construction of it through the years (p. 305).

It might be argued that this last sentence of the paragraph should be construed as relating only to the first sentence, and the circumstance that the last sentence was introduced on the floor of the House in the course of a discussion of the first sentence may be thought to give support to this construction. Such a construction, however, would subordinate the plain language of the statute to the form paragraphing, and would ignore the long-established custom of including items of permanent general legislation on Indian affairs in scattered paragraphs of appropriation acts. While rejecting the construction which would limit the duty of legal representation to public land contests, the Department of Justice has occasionally taken the view that the statute in question contains an implied proviso, and that the phrase "all suits at law and in equity" really means "all suits at law and in equity in which the United States has an interest."[8]

(*Federal Indian Law* notes that the Justice Department has taken the positioe that Section 175 has no application to criminal prosecutions. However, where state criminal prosecutions were brought against Indians for violations of statn game laws, the Justice Department has held that it could maintain an action to restrain state authorities from interfering with the exercise of Indian treaty guaranteed fishing rights, and the United States attorney appeared for the purpose of protecting and defending the Indians (pp. 305–306). *Federal Indian Law* also cites an Opinion of the Attorney General [20 Op. A. G. 620 (1893)] holding that United States attorneys are not required to represent Indians in suits brought by them in states where they do not reside, founded on claims of inheritance from white persons not members of the tribe (p. 304)). In other words, since, in the view of the Justice Department, Section 175 does not apply to cases in which the United States does not have an interest, the Department retains discretion to determine, which cases, if any, involving Indians in their individual (non-trust) capacities, it will prosecute or defend in the name and in behalf of the Indians.)

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[8] In the *Constitution Indemnity Company* case in California, no legal representation was furnished in a suit for negligence resulting in personal injuries or death of Indians, even though such Indians were still wards of the Government (Justice Department file No. 90–2–0–63). And again representation was denied in suit to recover damages for the death of restricted Fort Peck Agency Indians from the Great Northern Railway (Justice Department file No. 90–2–0–135). Cf. *Oregon Short Line R. Co.* v. *United States*, 145 F. 2d 1 (1944), *United States* v. *Oregon Short Line Co.*, 113 F. 2d 212 (1940). However, on December 26, 1929, the Attorney General advised a United States attorney to represent a Hopi Indian, Tom Pavatea, sued for accidental shooting of a white man off the reservation. See Ind. Off. Memo., May 20, 1930. In the case of the claim of the Indians of the Warm Springs Reservation against the Montana Horse Products Co., the United States attorney brought suit in the name and behalf of the Indian to compel the said company to pay to individual Indians the stipulated consideration for catching a number of wild horses roaming on the reservation (Justice Department file No. 90–2–19–6).

From these decisions, a clear pattern emerges. The Justice Department has limited Section 175's mandatory applicability to "all suits at law and equity in which the United States has an interest." By negative implication, it can be assumed that the authors of *Federal Indian Law* were unable to locate any files in which the Justice Department denied that it had a mandatory obligation, pursuant to Section 175, to bring suit on behalf of reservation or allotted Indians in matters relating to trust property. A careful search by plaintiffs' attorneys has also failed to disclose any case in which the United States attorney represented reservation or allotted Indians in matters relating to trust property that were not brought in the name of the United States.

It is therefore clear that, at the very least, Section 175 requires the United States Attorney to represent reservation and/or allotted Indians in *all* civil suits involving trust or restricted property. Apparently, there is no authority as to whether the United States has, by virtue of Section 175, consented to be joined as a plaintiff in such suits. However, from the very thorough analysis of all the relevant material, including Justice Department files, in *Federal Indian Law*, it appears very doubtful whether the Justice Department has ever refused a request, predicated expressly upon Section 175, to bring suit on behalf of reservation or allotted Indians and in the name of the United States in matters relating to trust property which do not involve a conflict of interest. [For an example of the conflict problem, see *United States* v. *Gila River, Pima-Maricopa Indian Community*, 391 F. 2d 53 (9th Cir. 1968).] The consistency of the Justice Department's own interpretation of the statute prior to the case at bar, an interpretation that dates back to the Attorney General's analysis in 25 I.D. 426 (1897), discussed at length in plaintiffs' two previous memoranda, also helps to explain the relative absence of case law on the subject.

* * * * * * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

NO. 69–217–K

RINCON BAND OF MISSION INDIANS, LA JOLLA BAND OF MISSION INDIANS, PLAINTIFFS, *v.* ESCONDIDO MUTUAL WATER COMPANY, ET AL., DEFENDANTS

ORDER DIRECTING ATTORNEY GENERAL AND SECRETARY OF INTERIOR TO EXERCISE DISCRETION AND CONTINUING TEMPORARY RESTRAINING ORDER

On October 15, 1969, and October 29, 1969, plaintiffs' motions for preliminary injunctions, and the orders of this court requiring defendants to show cause why certain injunctive relief should not be granted and the motion to dismiss by defendants John N. Mitchell and Walter J. Hickel came on regularly to be heard before the Honorable Edward J. Schwartz, United States District Judge. Plaintiffs appeared by their counsel of record, California Indian Legal Services by Robert S. Pelcyger and David H. Getches; defendants John N. Mitchell and Walter J. Hickel appeared by their counsel of record, United States Attorneys Donald W. Redd and Frederick B. Holoboff; and defendants City of Escondido and the Escondido Mutual Water Company appeared by their counsel of record, Paul D. Engstrand, Wallace R. Peck, and Donald R. Lincoln of Higgs, Jennings, Fletcher & Mack. Said matter was presented to the court by means of affidavits and oral and written argument.

The court concludes that although 25 U.S.C. Section 175 states that "In all states and territories where there are reservations or allotted Indians, the United States Attorney shall represent them in all suits at law and in equity," the duty imposed upon the United States Attorney is not mandatory, but is discretionary. However, the United States Government, including the Department of the Interior and the Department of Justice have been aware of complaints and problems of the Indians along the San Luis Rey River, and it appears that at least since 1925 said departments have been considering what action, if any, should be taken in regard to water and other property rights of the Indians along the San Luis Rey River. The Department of Justice and the Department of the Interior have failed to exercise their discretion to decide what action, if any, should be taken. Said discretion should be exercised and it is within the power of the court to order officials of the executive department of the federal government to exercise their discretion when they fail to do so. Forty-five days is a reasonable time for said defendants to exercise their discretion.

THEREFORE, IT IS ORDERED that defendants, John N. Mitchell, as Attorney General of the United States, and Walter J. Hickel, as Secretary of the Interior of the United States, must exercise their discretion in regard to the above entitled action, and must either prosecute this action, bring a separate action, or clearly indicate in writing to this court why the best interests of the plaintiffs' demand that no such action be prosecuted; and

IT IS FURTHER ORDERED that such discretion must be exercised by said defendants John N. Mitchell and Walter J. Hickel within forty-five days from October 29, 1969, and

IT IS FURTHER ORDERED that on December 17, 1969, at 2 p.m. defendants John N. Mitchell and Walter J. Hickel shall report to this court as to what action they have taken in the exercise of their discretion as above ordered; and

IT IS FURTHER ORDERED that the hearing on plaintiffs' motions for preliminary injunctions, and the orders of this court requiring defendants to show cause why certain injunctive relief should not be granted, and the motion to dismiss the action by defendants John N. Mitchell and Walter J. Hickel be and they hereby are continued until December 17, 1969, at 2 p.m.; and

IT IS FURTHER ORDERED that the temporary restraining order presently in effect preventing defendants City of Escondido and Escondido Mutual Water Company, their agents, servants, and employees and all persons in active concert and participation with them, from entering into any contract or agreement selling or otherwise transferring any of the Escondido Mutual Water Company's assets to the City of Escondido, and enjoining the City of Escondido and the Escondido Mutual Water Company from taking any further action in that civil condemnation action now pending in the Superior Court of the State of California in and for the County of San Diego, No. 306259, is extended to the said hearing date of December 17, 1969; and

IT IS FURTHER ORDERED that the $500.00 security bond posted by the plaintiffs when the temporary restraining order was initially issued shall continue in effect to and including said hearing date on December 17, 1969.

Dated: November 26, 1965.

——— ———,
United States District Judge.

Presented by: ——— ———.

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Civil No. 69-217-K

RINCON BAND OF MISSION INDIANS, ET AL., PLAINTIFFS, v. ESCONDIDO MUTUAL WATER COMPANY, ET AL., DEFENDANTS

RESPONSE OF ATTORNEY GENERAL AND SECRETARY OF THE INTERIOR TO COURT ORDER DATED NOVEMBER 26, 1969

By its order dated November 26, 1969, this Court directed that the defendants John N. Mitchell and Walter J. Hickel, within 45 days from October 29, 1969, must exercise their discretion in regard to this action and must either prosecute this action, bring a separate action, or clearly indicate in writing to this court why the best interests of the plaintiffs' demand that no such action be prosecuted. Without waiving their position that their decision respecting the matter in question is entirely at their discretion and is not in any way subject to the mandamus jurisdiction of this Court, the named defendants make the following response to the said order of November 26, 1969.

I.—Since 1950 there has been pending before the Indian Claims Commission a petition in which the plaintiffs here inter alia, assert against the United States claims for damage arising out of the same factual circumstances as those which their claims in this action are predicated. As required by statute the Department of Justice has defended those claims against the United States and the matter has been fully tried on the issue of liability and is now pending for decision by the

Commission. The proceeding before the Indian Claims Commission is there, and hereinafter, designated as Docket 80-A.

In its defense in Docket 80-A the Department of Justice has among other things contended, and continues to contend, that the plaintiffs have suffered no damages, at least insofar as their alleged water rights are concerned, as a result of the activities of the Escondido Mutual Water Company and that the United States is therefore not liable to the petitioners in that proceeding. In order that this court may be fully advised as to the positions taken by the Department in that proceeding, copies of the United States' "Requested Findings of Fact, Objections to Petitioners' Proposed Findings of Fact, and Brief" and "Claimants' Proposed Findings of Fact and Brief" are filed herewith.

The positions which the plaintiffs here desire that the named federal officer defendants take in their behalf, either through participation in this action or through the initiation of a separate action, are not consistent with the positions already taken and the evidence, as the Department of Justice sees it, in Docket 80-A. The Attorney General cannot, consistently with his obligation to defend the United States in the latter proceeding, abandon those positions or assert the insufficiency or invalidity of the evidence on which these positions are based. Accordingly, were the Attorney General to decide either to pursue this action or to initiate another action in behalf of the plaintiffs it would necessarily have to be on a basis which would be compatible with the record made in Docket 80-A, and that obviously would not be satisfactory to the plaintiffs.

For example, the contention of plaintiffs, up to this point in this action, is that the United States Government since 1925 has been aware of problems of the Indians along the San Luis Rey River and that no action has been taken in regard to their water and other property rights. The record, as reflected by the United States Requested Findings of Fact in the Indian Claims Commission proceedings is to the contrary. On the basis of the evidence adduced in that proceeding, those Requested Findings reflect that the United States has taken numerous actions to assist the plaintiffs and the Indians along the San Luis Rey River to develop the uses of irrigation water on their reservations.

It is the judgment of the named defendants that the interests of the plaintiffs will in this instance be better served if the United States permits them to proceed, without its intervention, in the pursuit of their claims against the Water Company and the City through independent counsel. In this way, any risk that all contentions in support of the plaintiffs' claims would not be asserted to their full extent because of possible effect on the Docket 80–A proceeding would be avoided. Problems in management of the litigation which would be present were the United States to enter the instant case or file a separate case would also be avoided. Were the United States to come into this case one of the first questions would be whether the plaintiffs, through independent counsel, would be permitted to take actions contrary to decisions by the Department of Justice. It is our position that if the United States were in the case the Department would have to exercise complete control over the conduct of the case in behalf of the plaintiffs. Although other counsel might continue in the case, they would not be permitted to take actions contrary to or inconsistent with those taken by the Department of Justice.

With respect to the filing of an independent action there is first the question of what effect this would have upon this lawsuit. There is strong authority to the effect that the filing of an action by the United States for the protection of restricted Indian property rights preempts the field and the Indians would not be permitted to pursue an action on their own behalf with respect to those same property rights. In the case of *Heckman* v. *United States*, 224 U.S. 413, the Supreme Court made the following statement:

> In what case the United States will undertake to represent Indian owners of restricted lands in suits of this sort is left under the acts of Congress to the discretion of the Executive Department. The allottee may be permitted to bring his own action, or if so brought the United States may aid him in its conduct and when the United States itself undertakes to represent the allottees of lands under restriction and brings suit to cancel prohibited transfers, such action necessarily precludes the prosecution by the allottees of any suit for a similar purpose relating to the same property.

In several cases where the United States has brought actions to protect Indian water rights, the Indians have attempted to intervene on their own behalf. The courts have not permitted them to do so. See for example, *Arizona*, v. *California, et al.*, 368 U.S. 917; *United States* v. *Alpine Land and Cattle Co.*, No. 24156 in the Court of Appeals for the Ninth Circuit. (Copy of the district court memorandum opinion in the Alpine case is attached hereto, as Attachment A.) It is the judgment of the named defendants that if the plaintiffs and their attorneys are firmly convinced that the positions they assert in this matter are correct, it is not in the plaintiffs' interest that the United States take a course of action which might thwart those contentions. Even if the Court should conclude that the filing of an independent action by the United States on behalf of the Indians in this matter did not preempt the field and the two lawsuits were permitted to proceed simultaneously, the advocation of different positions in behalf of the Indians in the two cases would tend to prejudice the Indians' interests in both cases. For these reasons it is the decision of the named defendants that the United States should not at this time either intervene in behalf of plaintiffs in this case or file a separate action.

II.—Notwithstanding the decision stated above, the Departments of Justice and of the Interior continue to be desirous of lending their good offices in any reasonalble way to the negotiation of a settlement of the claims of the plaintiff Indian bands and thereby to avoid the protracted litigation which the prosecution of this case to final judgment would entail. The manner in which such assistance might be given remains to be determined, and before such determination can be made it is necessary that the status of plaintiffs' attorneys in this case with reference to Docket 80–A be clarified.

Both the Rincon and La Jolla bands have adopted resolutions in which the terms of settlement which they propose are set forth. Each resolution is to the effect that the band authorizes its attorneys in this action to negotiate on the basis of a "package settlement" of (a) the band's Docket 80–A claim and (b) the bands' claims against Escondido Mutual Water and the City of Escondido. In discussions heretofore had, the said attorneys for the two bands in this action have been adamant in their insistance that Docket 80–A must be settled contemporaneously with any settlement of their claims against the Water Company and the City.

But as has heretofore been pointed out to the Court, plaintiff's attorneys in this action are not authorized to represent plaintiffs in their Docket 80–A claims. On the contrary, plaintiffs are party to a contract with other attorneys providing for their representation in Docket 80–A. Although one of the plaintiffs attorneys in Docket 80–A has resigned and the Rincon and La Jolla bands have requested the Interior Department to remove Charles E. Burch, Jr. as Attorney of Record therein, the request has not been acted on. We are informed that the bands have not, however, formally designated a substitute for Mr. Burch in Docket 80–A.

The bands have been informed that, whatever action may be taken on the request that Mr. Burch be removed as attorney of record in Docket 80–A, the attorneys for plaintiffs in this case cannot in any event be approved as their attorneys in Docket 80–A absent proper request therefor by tribal action and the submission of a proposed contract for approval. We understand that steps are being taken in this direction, but that a further complication may exist because there are attorneys other than Mr. Burch named as authorized representatives of the bands in Docket 80–A. We further understand that the other attorneys so named have indicated to plaintiffs' counsel in this case their unwillingness to step aside in Docket 80–A.

Obviously, the matter of the Rincon and La Jolla representation in Docket 80–A must be resolved before there can be any meaningful consideration of settlement of that case. It is equally clear that so long as the bands adhere to their present position that there must be a package settlement of their claims in Docket 80–A and in this case, it would be pointless to attempt to initiate serious settlement negotiations so far as this case is concerned.

If the plaintiff bands should decide to proceed in an effort to negotiate a settlement of their claims against Escondido Mutual Water Company and the City of Escondido, representatives of the Department of Justice and of the Interior will undertake to arrive at an understanding with counsel for the plaintiffs here as to the role they can best play in such negotiations and, if satisfactory understanding can be reached, to proceed accordingly. If the bands adhere to their insistence on a package settlement of the two cases, any effort to reach a similar understanding will, of course, have to depend upon there first being a resolution of the question of representation in Docket 80–A.

Respectfully submitted,

Shiro Kashiwa,
Assistant Attorney General,
Harry D. Steward,
United States Attorney,
Raymond Zvetina,
Assistant United States Attorney,
Donald W. Reed,
Attorney, Department of Justice.

3. Correspondence, Memoranda, and Related Materials Concerning Quinault Logging Controversy

WILKINSON, CRAGUN & BARKER LAW OFFICES,
Washington, D.C. November 3, 1971.

Hon. EDWARD M. KENNEDY,
U.S. Senate,
Washington, D.C.

DEAR SENATOR KENNEDY: At the hearings you chaired recently before the Subcommittee on Administrative Practice and Procedure of the Senate Judiciary Committee concerning the administrative practices and procedures relating to the protection of Indian natural resources, many conflicts of interest situations within and between the Department of Interior and Justice which adversely affected Indian water rights were presented.

In your opening statement, you referred specifically to the Forest Service and its mismanagement of Indian forests. We thought that you would be interested in seeing the petition we filed with the United States Court of Claims on October 18, 1971, on behalf of the individual allottees of the Quinault Indian Reservation in Washington. The chronology of events outlined in the petition merely shows that the area of water rights is not the only area in which the activities of the United States in regard to the American Indian have been and continue to be unconscionable.

Hearings such as those you held serve a dual purpose. First, they educate people to the immense problem that the Indian faces in getting a square deal from their "trustee." Second, they renew the outrage of those of us who have daily contact with this plight but must, for the sake of our clients, attempt to get the best for them we can while working within the "system."

We suggest that perhaps the petitions enclosed are appropriate for inclusion in the record of the hearings to point out that the Indian always loses in situations where his interests conflict with those of some other department or agency of the trustee.

If we can be of any further assistance, please contact us.

Sincerely,

CHARLES A. HOBBS.

Enclosure.

[Filed 10/18/71]

In the United States Court of Claims

No. —

HELEN MITCHELL, AN ALLOTTEE OF THE QUINAULT RESERVATION, AND 530 OTHER ALLOTTEES LISTED ON ATTACHMENT A HERETO; THE QUINAULT ALLOTTEES ASSOCIATION; AND THE QUINAULT TRIBE; ON THEIR OWN BEHALVES AND ON BEHALF OF ALL ALLOTTEES OF THE QUINAULT RESERVATION OR THEIR SUCCESSORS, PLAINTIFFS,

v.

THE UNITED STATES OF AMERICA, DEFENDANT.

Petition

(Logging Contracts Claim)

This is an action to recover money damages from the defendant, arising from its management and disposition of the property of the plaintiffs. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1491 and 1505.

1. Plaintiff Helen Mitchell and the 530 other plaintiffs named in Attachment A hereto (omitted) are Indians who received trust allotments on the Quinault Indian Reservation, Washington, or are the successors of such Indians. Plaintiffs are predominantly Quinault Indians, but also include Queets, Quileute, Hon, Chehalis, Cowlitz, Chinook and other Indians.

2. The Quinault Allottees Association is an unincorporated association consisting of the allottees described in the preceding paragraph. The Association was

formed in 1968 for the purpose of representing the interests of all of the allottees of the Quinault Reservation, or their successors. Plaintiffs know the names of some 1,450 of the original allottees or their successors, but there are many more names which plaintiffs do not know. The Association's governing body is the Quinault Allottees Committee, and Chairman of the Committee is plaintiff Helen Mitchell. The Secretary of the Interior has from time to time recognized the Committee as representing all of the allottees of the Quinault Reservation.

3. The Quinault Tribe is an Indian Tribe, which has been in existence since time immemorial, and which has sovereignty over the Quinault Reservation. Its basic relationship with the defendant is established by the Treaty of Olympia, paragraph 5 below.

4. The class on whose behalf the plaintiffs sue consists of all allottees of the Quinault Reservation, or their successors, plus the Quinault Tribe in its capacity of owner of land and timber damaged by defendant's conduct as alleged herein. The class is so numerous that joinder of all members is impractical; the questions of law as to liability are common to the entire class; the claims and defenses of the plaintiffs are typical of the claims and defenses of the class; and the representative plaintiffs will fairly and adequately protect the interests of the class. Further, the prosecution of separate actions by individual members of the class would create a risk both of inconsistent and varying adjudications with respect to individual members of the class establishing incompatible judicial standards, and of prejudicing individual members of the class whose interests would be substantially impaired by the result in this suit. Further, the interests of those members of the class who are not named plaintiffs cannot as a practical matter be adjudicated with finality except through a class action. Further, the claims presented herein arise out of the management of the Quinault Forest, which the defendant managed in many respects as a single entity.

5. Under the Treaty of Olympia, 12 Stat. 971 (1859), the Quinault and Quileute Tribes ceded all their land in the country theretofore occupied by them on the Pacific coast of Washington. The Treaty provided that:

> "Article II. There shall, however, be reserved, for the use and occupation of the tribes and bands aforesaid, a tract or tracts of lands sufficient for their wants within the Territory of Washington, to be selected by the President of the United States, and hereafter surveyed or located and set apart for their exclusive use, and no white man shall be permitted to reside thereon without permission of the tribe and of the superintendent of Indian Affairs or Indian agent. . . .
>
> "* * *
>
> "Article VI. The President . . . may consolidate them with other friendly tribes or bands . . . and he may further, at his discretion, cause the whole or any portion of the lands to be reserved, or of such other land as may be selected in lieu thereof, to be surveyed into lots, and assign the same to such individuals or families as are willing to avail themselves of the privilege, and will locate on the same as a permanent home, on the same terms and subject to the same regulations as are provided in the sixth article of the treaty with Omahas, so far as the same may be applicable."

6. The sixth article of the Treaty with the Omahas, 10 Stat. 1043, 1044–5 (1854), referred to in the Quinault Treaty, provides as follows:

> "Article 6. The President may, from time to time, at his discretion, cause the whole or such portion of the land hereby reserved, as he may think proper, or of such other land as may be selected in lieu thereof, as provided for in article first, to be surveyed into lots, and to assign to such Indian or Indians of said tribe as are willing to avail of the privilege, and who will locate on the same as a permanent home, if a single person over twenty-one years of age, one-eighth of a section; to each family of two, one quarter section; to each family of three and not exceeding five, one half section; to each family of six and not exceeding ten, one section; and to each family over ten in number, one quarter section for every additional five members. And he may prescribe such rules and regulations as will insure to the family, in case of the death of the head thereof, the possession and enjoyment of such permanent home and the improvements thereon. And the President may, at any time, in his discretion, after such person or family has made a location on the land assigned for a permanent home, issue a patent to such person or family for such assigned land, conditioned that the tract shall not be aliened or leased for a longer term than two years; and shall be exempt from levy, sale, or forfeiture, which conditions shall continue in force, until a State constitution, embracing such lands within its boundaries, shall have been formed, and the legislature of the State shall remove the restrictions.

> And if any such person or family shall at any time neglect or refuse to occupy and till a portion of the lands assigned and on which they have located, or shall rove from place to place, the President may, if the patent shall have been issued, cancel the assignment, and may also withhold from such person or family, their proportion of the annuities or other moneys due them, until they shall have returned to such permanent home, and resumed the pursuits of industry; and in default of their return the tract may be declared abandoned, and thereafter assigned to some other person or family of such tribe, or disposed of as is provided for the disposition of the excess of said land. . . . No State legislature shall remove the restrictions herein provided for, without the consent of Congress."

The State of Washington was admitted into the Union in 1889, 25 Stat. 676. The state legislature has not removed the restrictions provided for in the above-quoted Article 6, nor has Congress consented to the removal of the restrictions.

7. On November 4, 1873, 1 Kapp. 923, President U.S. Grant by Executive Order established the Quinault Reservation with its present boundaries "for the use of the Quinaielt, Quillehute, Hoh, Quit, and other tribes of fisheating Indians on the Pacific Coast . . . ." Since 1874 the Quinault Indian Reservation has retained its outer boundaries without change. It comprises some 200,000 acres, including all of Lake Quinault and 20 miles of tidelands along the ocean, and was originally heavily forested throughout.

8. The Tribe remained the sole owner of the Reservation until about 1905. Then, pursuant to the above-quoted Treaty and Executive Order, the General Allotment Act of 1887, 24 Stat. 388, 25 U.S.C. § 331, and the Act of March 4, 1911, 36 Stat. 1345, defendant began to allot the Reservation to the members of the Tribe and other Indians. By 1933, the Reservation was completely allotted. There were over 2,300 allotments, typically 80 acres in size, and covered with valuable timber.

9. Each allottee received a deed, signed in the name of the President of the United States, containing language pursuant to Sec. 5 of the General Allotment Act, as amended, 25 U.S.C. § 348, that the United States will hold the allotment for the period of 25 years,

> ". . . in trust for the sole use and benefit of the Indian . . . or in case of his decease, of his heirs . . . and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever. . . ."

The trust period of 25 years was extended from time to time, see 25 U. S. C. § 391, and then extended indefinitely by Sec. 2 of the Indian Reorganization Act of 1934, 48 Stat. 984, 25 U.S.C. § 462.

10. Pursuant to the Quinault Treaty, the Executive Order of 1873, the General Allotment Act of 1887, and the Act of March 4, 1911, the defendant has a fiduciary duty to the allottees to manage their lands and timber prudently, until the trust period ends. See also the Indian Reorganization Act of 1934, 48 Stat. 984, 25 U.S.C. §§ 461 ff., especially § 466, directing the Secretary of the Interior to make regulations for the management of Indian forestry units on a sustained yield basis; and 41 Stat. 415 (1920), 25 U.S.C. § 413, authorizing the Secretary to collect fees for defendant's services. Defendant's duty is in part recognized and embodied in the Secretary's Forestry Regulations, 25 C.F.R. Part 141.

11. The Tribe owns a few small parcels of land, totalling about 4,000 acres, some as a result of restorations by Congress, see, *e.g.*, 73 Stat. 427 and 76 Stat. 913. All of the land and timber owned by the Tribe is held in trust by the defendant for the Tribe, and so long as the trust continues, the defendant has a fiduciary duty to manage such land and timber prudently. This duty is recognized in 60 Stat. at 1055–6 (1946), Sec. 24; and see 25 U.S.C. § 466, directing the Secretary of the Interior to make regulations for the management of Indian forestry units on a sustained yield basis; and 25 U.S.C. § 413, authorizing the Secretary to collect fees for defendant's services. Defendants' duty is in part recognized and embodied in the Secretary's Forestry Regulations, 25 C.F.R. Part 141.

12. The Indian sovereignty over the Reservation lies in the Quinault Tribe. The membership of the Tribe consists of "blood members" (persons of at least one-quarter Quinault or Queets blood) and "affiliated" members (persons of at least one-quarter Quileute, Hoh, Chehalis, Chinook or Cowlitz blood who own a trust interest in an allotment on the Reservation, and who reside on or near the Reservation). Many allottees are blood or affiliated members of the Tribe. However, many other allottees do not live on or within the required distance of the Reservation and so are ineligible to be members.

13. The allottees as such were totally unorganized until 1968. The Tribe has always been organized, but it could not, and did not, represent the allottees.

14. The typical allottee, for lack of education, experience and capacity to understand, relies completely on the defendant to manage his land and timber prudently, and to obtain the fair market price therefor when sold. The defendant is well aware of this reliance.

15. In 1916, after the Reservation was partially allotted, the defendant caused the timber on the Reservation to be inventoried, and logging began shortly after. The first long-term logging contract was let in 1920. By 1950, the southern halr of the Reservation had been logged or was in the process of being logged undef long-term contracts. Still unlogged were the Queets, Taholah and Crane Creek Units, comprising about 45,000, 30,000 and 35,000 acres respectively, in the northern half of the Reservation.

16. Beginning around 1946, in order to arrange for the logging of these three remaining units, the defendant set about gathering powers of attorneys from the owners of allotments in the Queets, Taholah, and Crane Creek Units, authorizing the defendant to enter into long-term logging contracts. Many allottees were told or encouraged to believe that unless they signed the powers, their timber would be left out of the logging contracts, and the Secretary might not permit it to be logged in their lifetimes. The defendant's employees obtained signatures without adequate or accurate explanation of the facts and the alternatives available, and with misrepresentation, and with undue influence. Plaintiff were incapable of making an intelligent decision whether to sign the powers, and signed only in reliance on defendant's representation that it would be in their best interests to do so.

17. Pursuant to the aforesaid powers of attorneys and to its powers as trustee of the plaintiff's land, the defendant, acting through the Superintendent of the Taholah Indian Agency, entered into a contract with the Aloha Lumber Company on April 26, 1950, covering the Taholah Unit. Under this contract, Aloha purchased the timber on all allotments within the boundaries of the Taholah Unit and for which the Secretary had a power of attorney, and agreed to log it over the next 29 years. This contract will terminate in 1979.

18. The Crane Creek Unit contract was entered into with Rayonier, Inc., on June 18, 1952. It was in essential respects similar to the Taholah Unit contract, except that the term was 34 years, so that it will terminat3 in 1986.

19. The Queets Unit, comprising about 45,000 acres, was put up for bids, but no bids were received. Consequently, no long-term logging contract was let covering that unit, and logging since 1950 has been on an allotment-by-allotment basis. The defendant encouraged individual allottees in that unit to sell their land in fee, and discouraged or prohibited sales of timber only, and as a consequence, only about 5,700 acres of trust allotments with merchantable timber still remain in the Queets Unit, the rest having been sold to non-Indians.

(First Petition)

20. The various contracts which defendant arranged for the logging of the Quinault Forest failed adequately to protect the interests of the allottees and the Tribe. Furthermore, the contracts were administered by defendant in such a way as to fail adequately to protect the interests of the allottees and the Tribe. The arranging of the contracts and their administration were in breach of defendant's fiduciary duty to the allottees and the Tribe. As a result, the allottees and the Tribe failed to receive fair market value for their timber, were unnecessarily delayed and restricted in realizing proceeds from their timber, suffered loss of property without just compensation, and suffered other damages in connection with the contracts.

Wherefore, the plaintiffs are entitled to recover such damages as the proofs may show are proper and as their interests may appear, together with interest as such or as part of just compensation, and such other relief as this Court may deem proper.

Respectfully submitted,

* * * * * * *

(Second Petition)

20. The defendant's management of the Queets Unit, for example its failure to arrange for proper logging of the unit, its failure to insure a sound road system prior to allowing most of the land to go out of Indian ownership, its encourage-

ment of land sales by Indians, its policies toward Indians who wanted to log their own allotments, were in breach of defendant's fiduciary duty to the allottees and the Tribe. The same allegations also apply to individual allotments located within areas under logging contracts but not subject to such contracts, and to other allotments. As a result, the allottees and the Tribe failed to receive fair market value for their land and timber, were unnecessarily delayed and restricted in realizing proceeds from their timber, suffered loss of property without just compensation, and were otherwise damaged. The Tribe was specially damaged in having a substantial part of its jurisdiction pass into non-Indian ownership.

Wherefore, the plaintiffs are entitled to recover such damages as the proofs may show are proper and as their interests may appear, together with interest as such or as part of just compensation, and such other relief as this Court may deem proper.

Respectfully submitted.

* * * * * * *

(Third Petition)

20. The defendant's management of the plaintiff's land, to the extent it failed to arrange for proper rehabilitation and reforestation of cutover land, and for proper care of growing timber, was in breach of its fiduciary duty to the allottees and the Tribe. As a result, the volume of timber owned by the allottees and the Tribe failed to increase from year to year at the rate it should; they suffered loss of property without just compensation, and were otherwise damaged.

Wherefore, the plaintiffs are entitled to recover such damages as the proofs may show are proper and as their interests may appear, together with interest as such or as part of just compensation, and such other relief as this Court may deem proper.

Respectfully submitted.

* * * * * * *

(Fourth Petition)

20. The Act of February 14, 1920, 41 Stat. 415, 25 U.S.C. § 413, provides as follows:

> "The Secretary of the Interior is hereby authorized, in his discretion, and under such rules and regulations as he may prescribe, to collect reasonable fees to cover the cost of any and all work performed for Indian tribes or for individual Indians, to be paid by vendees, lessees, or assignees, or deducted from the proceeds of sale, leases, or other sources of revenue: *Provided*. That the amounts so collected shall be covered into the Treasury as miscellaneous receipts, except when the expenses of the work are paid from Indian tribal funds, in which event they shall be credited to such funds."

The Secretary's regulations, 25 C.F.R. § 141.18, provide:

> "In sales of timber from either allotted or unallotted lands, a reasonable deduction shall be made from the gross proceeds to cover in whole or in part the cost of managing and protecting the forest lands, including the cost of timber sale administration, but not including the costs that are paid from funds appropriated specifically for fire suppression or forest pest control. Unless special instructions have been given by the Secretary as to the amount of the deduction or the manner in which it is to be made, there shall be deducted 10 percent of the gross amount received for timber sold under regular supervision, and 5 percent when the timber is sold in such a manner that little administrative expense by the Indian Bureau is required. Service fees in lieu of administrative deductions shall be determined in a similar manner."

21. Since February 14, 1920, whenever a sale of timber from trust allotments or tribal trust land on the Quinault Reservation has taken place, the Secretary has collected from the proceeds of sale an administrative charge. Currently the charge is 10%, except where an Indian arranges for sale of his own timber, in which case the charge is currently 5%.

COUNT I

22. Over the years since 1920, defendant has received many payments from non-Indians for the purchase of plaintiffs' land and timber, and has never furnished a money accounting of the said payments. Pursuant to the fiduciary duty alleged in paragraphs 10 and 11 above, plaintiffs are entitled to such an accounting.

COUNT II

23. The amounts collected by the defendant from sales of plaintiffs' timber have greatly exceeded defendant's properly allocated costs, and the excess should be refunded to the plaintiffs. Plaintiffs are entitled to an accounting of the fees collected by defendant, and of the administrative costs claimed by defendant to be properly allocated thereto.

24. Pursuant to Rule 35(b), plaintiffs state that no action on this claim has been taken by Congress or by any other body. In Docket No. 524–69 Horton Capoeman, a Quinault allottee, claimed refund of the administrative charges, but his case was disposed of on the statute of limitations, without reaching the merits. See Opinion, April 16, 1971. Another petition making the same claim was filed in March, 1971, Docket No. 102–71, on behalf of the same class as herein. It is still pending.

Wherefore, plaintiffs demand the accountings described in Counts I and II

Respectfully submitted.

Charles A. Hobbs,
Attorney for Plaintiffs.

U.S. Department of the Interior,
Bureau of Indian Affairs,
Washington, D.C., October 22, 1971.

Charles McC. Mathias, Jr.
U. S. Senate,
Washington, D.C.

Dear Senator Mathias: Your September 28 letter transmitted Mrs. James Guandolo's inquiry about the American Indians, with the newspaper article concerning logging operations on Indian lands in the Northwest, and their effects on the streams.

With regard to logging operations, unquestionably they do have an immediate, but not necessarily a continuing, adverse effect on the production of fish in the streams that flow through the areas being logged. Although most of the streams along which logging is now occurring are of creek-size, rather than large enough to be classified as rivers, many of them do contribute to the production of salmon. Bureau personnel have worked closely with tribal representatives and fishery biologists of the Bureau of Sport Fisheries and Wildlife to develop strong controls in timber sale contract stipulations designed to prevent damage to the fishery potential on the Quinault Reservation.

In recent years, the logging operations under Bureau control on the Quinault and other Indian Reservations in the Nortwest have been conducted in a manner that will minimize the damage that results therefrom to creeks and rivers. Operators are required to remove logs and debris from all streams that have a potential for the production of salmon. Such stream clearance includes all windfalls and stream barriers that were present prior to logging.

Two large, long-term timber sales on the Quinault Reservation were made in the early 1950's and are administered by the Bureau. Both contractors, ITT Rayonier, Inc., and Aloha Lumber Corporation, a subsidiary of Evans Products Company, have been very cooperative in meeting the stream clearance requirements of their respective contracts. A 1971 report by the Bureau of Sport Fisheries and Wildlife credited the Bureau of Indian Affairs and ITT Raoynier, Inc., with the removal of debris from streambeds, thereby greatly enhancing the streams' potential for reproduction of salmon. Similar type of stream clearance is being accomplished by Aloha Lumber Corporation on streams in the Taholah Unit. However, such stream clearance is costly, and the end result is that the Indian owners receive less from the sale of their timber than they would if the stream clearance were not required.

With regard to the reference to regulations which call for leaving strips of standing timber on each side of streams and rivers, the contract regulations provide only that such strips may be reversed "in the discretion of the officer in charge." Unfortunately, experience has shown that when strips are left they often cause more damage than if they had been cut. Unless such strips are at least 500 feet wide, the streams which they are supposed to protect may become completely clogged from trees blown down by the strong winds which occur periodically throughout the fall and winter seasons.

Further, since the timber being logged is almost entirely in individual Indian ownership, the leaving of timber along the streams results in direct loss of income from the stumpage payments, to which the owners are entitled. Under the circumstances, any proposal to leave streamside timber in sufficient width to remain standing, and provide the desired benefits, should be accompanied by some means for reimbursing the Indian owners for the loss of income which they would sustain from such action.

Regarding lands that have passed into non-Indian ownership, the Bureau has no authority to supervise or control timber cutting on those lands, even though they are within the exterior boundary of the reservation.

We will continue our efforts to improve the logging operations on Indian lands. Our objective is to obtain a fair return to the Indian owners for the timber being cut, while maintaining, or possibly even improving, the fish-producing potential of the streams along which the timber is being harvested.

History has indeed been hard on the First Americans. On August 13, 1946, Congress established the Indian Claims Commission, whereby Indians, through courts, may be reimbursed for lands taken from them without just compensation. To date, claims totaling in excess of $350,000,000 have been awarded various tribal entities. A fact sheet pertaining to the Indian Claims Commission is enclosed.

SURVIVAL OF AMERICAN INDIANS ASSOCIATION,
Tacoma, Wash., November 5, 1971.

Hon. CHARLES McC. MATHIAS, Jr.
U.S. Senate,
Washington, D.C.

DEAR SENATOR MATHIAS: I have secured a copy of a letter addressed to yourself from Deputy Commissioner of Indian Affairs John O. Crow, dated October 22, purporting to refute the substance of a Jack Anderson column relating damages impact of industrial logging operations on the Quinault Indian Reservation. Mr. Crow's letter reflects the irresponsible attitudes which have permitted wholesale destruction of Indians' forest, watershed, and fish resources to continue for decades without correction or curtailment.

Apart from the 1966 and 1971 reports of the U.S. Bureau of Sports Fisheries and Wildlife, which document past and current logging practices and their devastating effects, the U.S. Forest Service Pacific Northwest Forest and Range Experiment Station of Portland, Oregon, has just released two new reports which indicate that logging wastes on the Quinault Indian Reservation appear to be the most extreme of areas surveyed in Washington, Oregon and northern California. As reported in this morning's *Seattle Post-Intelligencer:*

> "More than 50 per cent of the total annual wood needs of all the pulp, paper and lumber mills in Western Washington and Western Oregon could be met by use of valuable wood left as waste after clearcut logging Operations."
>
> "An investigation of 30 logging areas in Washington and Oregon revealed that eight of the clearcut units were littered with from 100 to 227 tons of logging slash per acre."
>
> "Of the 30 clearcut units surveyed, by far the most logging slash was found on a 150-acre area in the Quinault Indian Reservation on the Olympic Peninsula.
>
> The reservation land, administered by the Bureau of Indian Affairs (BIA), is covered by an average 227 tons of slash per acre—100 tons more debris per acre than any other area included in the study."
>
> "One of the reports states: 'These residues must be removed from logged areas to allow ground space for (tree) regeneration, to eliminate obstacles to future harvesting, and to reduce fire hazard.'
>
> The report also says the slash obstructs forest recreation and efficient forest management . . . which to many, represent both a deprecation of natural beauty and a waste of potentially useable wood products." (Extracts from P–I article.)

However, of more immediate concern, are the distortions given by Mr. Crow to the existing reports of the U.S. Fish and Wildlife Service regarding related problems.

Mr. Crow suggests that creek-size streams do not merit the same consideration as streams which may be characterized as rivers. The 1966 and 1971 reports are quite explicit in relating the importance of these tributaries and creeks to salmon production. Because the smaller streams afford greater protection or less hazard to spawn deposits than the mainstem rivers, the productivity ratio per area unit in these smaller creeks are frequently much greater than salmon productivity ratios in river spawning areas. Total salmon production, and related harvest yields, rely heavily upon the productivity of these river tributaries or streams and creeks. The fact that these streams produce salmon is sufficient to declare their need for protection.

Damage to streambeds and salmon production has clearly not been minimized in recent years, although it may have been reduced from previous damage levels. There have been recurrent reports of logging companies' falling timber, and dropping treetops and branches, into streams, both when adult salmon were engaged in spawning activities and when egg deposits were vulnerable to destruction or extensive damage. Although controls upon gravel removal from rivers and streams were strengthened in the mid-1960s, there continue to be adverse activities within the streams by logging companies, including gravel removal.

Streamside strips of timber serve to minimize the conduct of logging operations within the streams themselves, helps to control water drainage and runoff into the streams, reduces adverse siltation problems having deleterious effects upon spawn survival, and maintains control upon water temperatures for assuring optimum spawn survival. The decomposition of logging debris in the streams can also have adverse effects upon the oxygen content of the waters.

The 1971 Sports Fisheries and Wildlife report did "credit" agencies and operators with taking some actions to improve operations, but emphasized the overall failure to eliminate harmful practices in many instances. The survey results demonstrated the currency of damages still being done.

The new U.S. Forest Service surveys clearly indicate that the BIA has not predicated its management policies and practices upon securing maximum timber returns and receipts for the Indian owners. The extent of timber wastes remaining after the removal of timber purchases by the logging companies offer an explanation of practices that does not coincide with Mr. Crow's statements. Further, evidence and testimony could be amassed to prove that Indian timber owners have almost ordinarily received less moneys for their timbers than non-Indian private timber owners selling similar tracts of timber. Timber has been allowed to lay upon Indian allotments for months, sometimes exceeding a year's time, in order that the logs could be purchased when the market prices were at their most depressed or lowest levels, or at the beginning of periods when the market prices took an upward swing or trend toward increases in value.

On the Quinault Reservation, a secondary industry of shake and shingle production, has relied upon the wastes of timber by the logging companies; it could be a service industry for maximizing receipts, but instead appears to be just another partner in the exploitation of Indian timber owners.

Doubtlessly, the problems on the Quinault Reservation have been aggravated by the passage of timbered lands from Indian ownership to non-Indian ownership. They have as well been aggravated by the division fo the reservation into a limited number of large timber contract units. Under the cutting plans and schedules of the large-scale contractors, it became a certainty for many Indian timber owners that they would not benefit in any manner from their timber holdings within their own lifetimes or in any immediate time periods. To permit any cutting of their timber required a change in land status, and for many years after initiation of the unit contracts the BIA demanded a removal of the lands from trust status in order to effect a timber sale—and encouraged only land-and-timber sales, rather than just timber sales.

The adoption of a program of advance payments to at least some Indian owners, particularly elderly persons and some persons without means of income, for uncut timber under the large unit contracts, could have been utilized to alleviate some of the contract-associated problems.

However, the Bureau of Indian Affairs has consistently acted without imagination or even any clear sense of responsibility in these matters. And although it might now cite non-Indian ownership as a factor limiting upon its authority and responsibility to control certain logging practices, it retains responsibility and authority for protecting against damages to tribal water and fishery resources within the reservation, notwithstanding the ownership status of lands and timber. In fact, the BIA responsibility and authority to act for the protection of water and fishery resources extends outside the reservation boundaries.

The BIA requested $5,182,000 for its forest management activities in the current Fiscal Year. It had $5,560,801 available in FY–70. Under its authority, existing since 1920, it has regularly deducted 10% of Indian timber receipts for payment into U.S. Treasury. This now ranges between 2.5 and 3 million dollars annually from those reservations which have timber. In 1969 deductions amounted to $3,136,000, part of this in repayment to tribes, who in the same Fiscal Year spent $686,738 (among 19 tribes) for BIA and Indian forest management programs.

This reflects a management cost of between 9 and 10 million dollars per year for caring for Indian forests nationally, annually. (The "recovery" deductions relate as much to expenditures in previous years as they do to any current federal expenditure, so cannot appropriately be subtracted from this amount.) Yet, damages to resources and correction costs, amounting in million dollar levels, continue to be incurred by Indians and the public.

The distortions and misrepresentations of fact being provided by the Bureau of Indian Affairs, as in Mr. Crow's letter, virtually create a demand that congressional hearings be conducted to provide an accurate record of the nature and scope of the problems, including agencies' and operators' positions and practices, for providing rational and adequate management of the Indian timber, water, and fish resources.

Respectfully yours,

HANK ADAMS,
Executive Director.

Enclosures.

[From the Seattle Times, Tuesday, September 14, 1971]

U.S. AIDE NONCOMMITTAL IN LOGGING DISPUTE

An assistant secretary of the Interior visited the Quinault Indian Reservation yesterday but was "extremely noncommittal" in his responses to the problems that led them to barricade logging operations, Indian spokesmen said.

The tribe is protesting logging methods and stumpage prices.

The official, Harrison Loesch, told the Indians "he just happened to be out this way on other business and had always wanted to see the Quinault Reservation," the spokesmen said.

Guy McMinds, Quinault general councilman, and Helen Mitchell, vice president of the Quinault General Tribal Council, said Loesch was shown what the Indians were complaining about and later flew over the area in a helicopter.

"About all he seemed interested in was how to split cedar shakes," McMinds said. "So we had a fellow show him how it was done. That seemed to make him real happy, but he couldn't give us any assurance of help in the present situation."

Firms that have a contract to log in the Taholah and Crane Creek areas of Grays Harbor County—I. T. T. Rayonier and the Aloha Lumber Corp.—made no effort to send loggers through the barricades.

Company spokesmen said court action is possible. Conferences with Bureau of Indian Affairs officials and possibly with the Indians themselves also were sought.

The companies asserted that the blocking of logging operations is a violation of a contract with the Quinaults and the bureau. Some 65,000 acres of timberlands are involved.

The Quinaults said the contract acres "are a mess, with slash everywhere to the point where nothing can grow. Streams are clogged and our fishery is being destroyed."

Indian spokesmen charged that the bureau is not representing them strongly enough in the protection of Indian rights. The Quinaults, too, are considering court action.

The Quinaults last August closed a 25-mile stretch of ocean beach on their reservation after the Indians charged that whites were littering the beaches and desecrating Indian landmarks.

The closure applied even to whites owning land within the reservation. About a third of the 150,000-acre reservation is owned by non-Indians who purchased the lands from Indians who had individual allotments.

NW LOGGING WASTE HIT BY TWO REPORTS

USABLE WOOD WASTE REVEALED—CLEARCUTTING UNDER FIRE

(By Dick Young)

Smashed logs, limbs, tree tops, rotten wood and broken down underbrush are glutting thousands of logged-over acres in the Pacific Northwest.

Two reports, just released by the U.S. Forest Service Pacific Northwest Forest and Range Experiment station in Portland, state that:

More than 50 percent of the total annual wood needs of all the pulp, paper and lumber mills in Western Washington and Western Oregon could be met by use of valuable wood left as waste after clearcut logging operations.

The Forest service says 465 million cubic feet of potentially usable wood has been left in the forest after clearcut logging in the Douglas Fir region of Washington Oregon and Northern California.

An investigation of 30 logging areas in Washington and Oregon revealed that eight of the clearcut units were littered with from 100 to 227 tons of logging slash per acre.

An example of Forest service findings can be taken from the 74-acre Ditney Cutting Unit No. 2 in the Mount Baker National Forest. Here USFS survey crews estimate that each acre is blanketed with 122 tons of slash, and that 39 tons of the debris on each acre is usable wood.

Pulp and paper industry statistics say that, typically, it takes three tons of wood chips to produce one ton of newsprint. Theoretically, the Ditney Unit logging slash could supply enough raw material to produce 10.5 daily editions of The Post-Intelligencer.

The Forest Service reports did not say it was economically possible at this time to use waste wood, but urged foresters to study better ways of using the debris from logging.

One of the reports states:

"These residues must be removed from logged areas to allow ground space for (tree) regeneration, to eliminate obstacles to future harvesting, and to reduce fire hazard."

The report also says the slash obstructs forest recreation and efficient forest management . . . which to many, represent both a deprecation of natural beauty and a waste of potentially usable wood products."

Of the 30 clearcut units surveyed, by far the most logging slash was found on a 150-acre area in the Quinault Indian Reservation on the Olympic Peninsula.

The reservation land, administered by the Bureau of Indian Affairs (BIA), is covered by an average 227 tons of slash per acre—100 tons more debris per acre than on any other area included in the study.

The Quinault Tribal Council is currently protesting logging practices on their lands. In September they locked timber companies out of the reservation as a protest move. The Indians have lawsuits pending in federal court and have written to President Nixon asking for help in preserving the economy and environment of their reservation.

The logging slash problem on the Quinault reservation is complicated by the fact that much of their timber is red cedar, a species that decomposes slowly. Also, red cedar is not widely used for pulp and paper chips.

The Forest Service estimates that the total of all logging residue on clearcut areas—usable and unusable—is 908 million cubic feet, the equivalent of about 26 per cent of the reported 1969 log harvest.

The most serious logging slash problems were found to be on National Forest lands.

The USFS says that volumes of debris on National Forest lands averaged three times greater than on privately owned land in the Douglas fir region.

The Forest Service concludes: "As economic and technological changes occur, logging residues may present a substantial base for increases in paper and board production, with no additional drain on the timber resource of the region."

THE QUINAULT STORY—A STUDY IN ENVIRONMENTAL DESTRUCTION AND GOVERNMENTAL DUPLICITY

While U.S. Secretary of the Interior Rogers Morton has been publicly lauding the integrity of American Indians for their conscientious regard for nature, calling them, "the First Environmentalists", he appears to be quietly ignoring the devastation of natural resources that is occurring on a number of Indian Reservations under the management supervision of his notoriously inept Bureau of Indian Affairs.

The shocking evidence of a ravaging of watershed, stream and valuable fishery resources on the 149,000-acre Quinault Reservation of coastal Washington State is presented in a confidential report recently completed by the U.S. Bureau of Sports Fisheries & Wildlife. Although the investigative survey does not assign blame for the massive destruction by logging industries to its sister agency in the Department of the Interior, an earlier report issued in 1966 cites the contract responsibilities of the Bureau of Indian Affairs to prevent such damage to the Indians' resources.

The report of five years ago aptly pointed out that standard BIA timber contracts in force continuously since April 1920, and in revised form since March 1960, all included provisions giving the BIA Forest Manager "authority to control logging for protection of streams and watersheds. Authority is specified to prevent obstruction and pollution and insure clean-up of logging debris in both flowing and intermittent streams . . . Provisions allow for leaving strips of streamside trees and other vegetation, for control of falling and yarding and use of heavy equipment to protect streambeds and banks, and prevent soil erosion during logging and road construction".

The 1966 survey declares that these contract provisions demonstrates that the "BIA is cognizant of the watershed value and need for protection", but only speculates upon the reasons why BIA foresters have never enforced the provisions against Rayonier Incorporated and Evans Products Company, the primary contractors operating upon the reservation units, or their subsidiaries and subcontractors. (Makah Indians have hopelessly requested enforcement repeatedly against Crown-Zellerbach Corporation on their timbered reservation, as well.)

Although industry, governmental and tribal officials did get together and proclaim the need for corrective action after issuance of the initial report, the May 1971 survey tells of river and creek areas "so littered with logging debris that fish passage is impossible". Streams stripped of their vegetation canopy have reached temperatures negating their potential for salmon production and optimum spawn survival. Only yearling fish were found in some areas, indicating formation of barriers "after the spawning imgration of their parents" and evidencing the extinction of at least one generation of spawning salmon and what would have been its progeny. Some waters were needlessly devoid of fishlife.

The outrage of the Indians and the Sports Fisheries & Wildlife agency is both intense and justified. On another part of the Quinault Reservation, the tribe and federal government are completing construction of a $1,896,000 salmon hatchery. The Interior Department requested $710,000 from Congress this year to complete it and to put the tribe's program to rehabilitate and develop their fishery resources into full fear. Additionally, more than half a million dollars in Accelerated Public Works and other federal funds were expended in the mid-1960s for reservation stream clearance and rehabilitation projects.

If the public may be incensed by use of their tax dollars to rectify and repair damages that the Bureau of Indian Affairs has contract authority to prevent, and industrial corporations have contract obligation to refrain from or assume costs for, taxpayers should understand the position of the Indians. The federal government holds the Indians' properties and funds in trust, and the BIA maintains trust responsibilities for managing them.

But beyond this, where Indians own marketable timber, the BIA has been granted authority since February 1920 by an Act of Congress, to take or deduct 10% of all Indian timber receipts in compensation for administration and management of the Indians' timber resources. In recent years, the national cost to Indians for BIA management of their forests has averaged between $2 million and $3 million.

In fiscal year 1969, Indians paid $2,459,000 into the U.S. Treasury for BIA management of their timber. $1,474,000 is estimated as the amount to be paid nationally this year. Yet, scandals of gross negligence and criminal mismagagement of Indian Forests, such as that occurring on the Quinault Reservation, continue to be hidden from public view and attention. And these costs to the Indians are dwarfed by the amounts in damages being done their resources, even through preventable forest fires, and which are being inflicted upon their reservation environments, watersheds and fishery resources—all while the Bureau of Indian Affairs sits on its contracts.

SURVIVAL OF AMERICAN INDIANS ASSOCIATION,
Tacoma, Wash., August 10, 1971.

Mr. LES WHITTEN,
Jack Anderson Associates,
Washington, D.C.

Dear LES: I believe I have a story for you. The documentation is supplied. A few years ago, I supplied related information to Ralph Nader which he used in a New Republic article about Indians. However, he only related that BIA mismanagement of Indian forests had led to major forest fires on the Quinault and Mescalero Apache Reservations. (On Mescalero, they had permitted continuance of logging operations while others in the State had been closed because of extreme fire hazards and dry conditions. On Quinault, the same was true, but additionally, failure to maintain proper clean-up practices in logged areas had been the principle cause for spread of the fire and the difficulties of bringing the consequent fire under control).

Today, I received a copy of a new report relating to logging operations on the Quinault Reservation and their devastating effects upon streams and watersheds and salmon production of water resources.

The story arises from the fact that an earlier, stronger and more comprehensive report was issued 5 years ago outlining the problems and the need for correction. Although there was some activity among governmental, tribal, and industry representatives to effect corrective policies and practices, the new report clearly establishes that they have already been largely abandoned.

The importance of the story hopefully becomes more clear in the attached story abstract that I'm writing to present relevent information from the reports and related sources. (The documentation I'm lacking is copy of a standard BIA logging contract as used between 1920 and 1960, and of standard BIA contract for years subsequent to 1960. However, the reports relate their relevant provisions.)

This would be an exclusive—and I'm certain that distribution of the report has been extremely limited. (When I was working for increased funding for the U.S. Bureau of Sports Fisheries and Wildlife while in the Army near Washington, D.C., the first report had to be smuggled to me through a series of untraceable contacts.)

Please try to do something on this—attention is greatly needed.

Best wishes,

HANK ADAMS.

A STUDY OF B.I.A. TIMBER MANAGEMENT ON THE QUINAULT INDIAN RESERVATION 1950–1970

(By Robert E. Beaty)

I wish to express thanks to the following people whose help proved invaluable in the preparation of this paper: Mrs. Helen Mitchell, the chairman of a group of Quinaults exploring timber problems on the reservation; Mr. Joseph Delacruz, business manager of the Quinault tribe; Mr. George M. Felshaw, Superintendent of the Western Washington Agency of the Bureau of Indian Affairs; and Professor Reid Chambers of the UCLA Law School. I alone am responsible for the opinions expressed, of course.

INTRODUCTION

Statement of the Problem

The Quinault Indian Reservation in Western Washington was created by the treaty of July 1, 1855 and January 25, 1856.[1] The Quinaults and allied tribes surrendered a vast tract of land on the Olympic Peninsula in return for the reservation and the protection and tutelage of the United States Government. The Quinault Reservation is presently comprised of 189,621 acres which border the Pacific Ocean in one of the few remaining areas of wilderness coast line in the United States.

The reservation encompasses huge timber resources which are its primary source of wealth. The Bureau of Indian Affairs has been disposing of the timber on the Quinault Reservation since the 1920's under the authority of the Act of June, 25, 1910.[2]

Between 1920 and 1950 most of the timber on the reservation was disposed of by long term contracts and provided sorely needed income to many otherwise destitute tribal members. In the 1940's the Bureau secured power-of-attorney agreements from individual allottees to dispose of the timber on two large areas of the reservation which were designated the Crane Creek and Taholah Units. In 1950 and 1952 the Bureau entered into two long-term contracts for the disposal of the timber in these units. The contracts were to run over periods of twenty-nine years and thirty-six years, respectively.

The Bureau has administered these contracts as a trustee of the individual Indians who were allotted portions of the reservation. Throughout the administration of these contracts there have been egregious abuses of the government's fiduciary duties. The purpose of this paper will be to examine the major abuses that have occurred in the administration of these contracts. It is by no means intended to be an exhaustive catalogue of all the indiscretions that have occurred. In particular, my research has convinced me that there have been many abuses of the Bureau's trust relations with individual Indians and that certain tribal officials have acted to the detriment of the tribe in their self interest. However, the details of the Bureau's relations with these individuals are beyond the scope of this paper.

Throughtout the inquiry it will be evident that imperative duties imposed on the government by several sources of law have been breached. The common law

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See footnotes on pp. 545–47.

has imposed a high standard of care upon the government in its role as a trustee in a number of cases. The Code of Federal Regulations has established reasonable standards for timber management on Indian lands that have not been adhered to in many instances. (I will examine those regulations at length as an indication of the minimum standards for government regulation.) No specific statutory standards of timber management exist, but the government acts essentially as a private trustee in those instances where it has assumed management of what amount to the Indians' private resources. In addition, certain silvicultural standards are required to be followed by the contracts which the government has used in disposing of Quinault timber. In all cases a violation of contractual or regulatory responsibilities would simultaneously violate common law duties. Consequently, this intricate weave should be borne in mind when specific standards are applied to a given question.

This study is divided into seven main areas: a background analysis of the Quinault Reservation and its people; an examination of the government's fiduciary duty; statutory authority and standards for the disposal of Indian timber; the practice of billing the interest charges on timber purchasers loans to the Indian vendors; the ten percent trust administration fee charged by the government; the pricing of the timber; and the forest management practices of the Bureau. [3]

The Quinault Reservation—Its Resources, Ownership and People

The Quinault Reservation borders the Olympic Rain Forest and average rainfall varies from 90 inches on the coast to 200 inches at the farthest point inland As such, the reservation provides optimum growing conditions for several species of timber.[4] The dominant species in the area are Douglas fir, western red cedar, and western hemlock. Between 1950 and December 31, 1970, 943,726,810 board feet of timber were taken out of the 30,000 acre Taholah unit. The value received amounted to $16,672,293. The 35,000 acre Crane Creek Unit produced 924,939,480 board feet of timber from 1952 to December 31, 1970. The Bureau received $16,171,254.79 for this timber.[5]

The importance of this resource to the Quinault tribe is illustrated by looking at the economic status of those Indians remaining on the reservation. The Western Washington Indian Agency of The Bureau of Indian Affairs estimated in 1968 that the average Quinault family of five has an annual income of $3,051. In September 1968 the rate of unemployment on the Quinault Reservation stood at 30%.[6] One third of those with jobs worked only part time. The high rate of unemployment is probably attributable to the remoteness of the reservation and lack of job skills among tribal members. Most of those Indians who work full time are employed in low and semi-skilled jobs in the forest products industry.[7]

The income generated by timber resources is distributed on the basis of value received for timber on an individual Indian's allotment. In 1970, 69.8% of the reservation consisted of lands allotted to individual Indians; 27.8% of the land had been alienated to non-Indians by the allottees (primarily to timber companies), and 2.4% of the reservation was tribal land.[8] Approximately half of the land remaining in Indian hands is in fee patent ownership. The lands are allotted among members of the Chinook, Chehalis, Cowlitz, Clatsop, Makah and other tribes as well as the Quinaults.[9] The lands were allotted under the provisions of the General Allotment Act of 1887.[10] The act was an attempt to bring Indians into the mainstream of 19th century American life by creating a class of agrarian Indians and eventually doing away with the reservation way of life. However, land on the Quinault Reservation is unsuitable for agriculture and virtually none has ever been tilled. In recognition of this fact the government nullified the distribution of land in forested reservation areas in 1921. However, an interested Quileute Indian forced the resumption of allotment in 1924.[11] When the final allotments were made in 1933, the program had placed 2340 Indians in allottee status. Since that time alienation and devise have both fractionalized and consolidated ownership of the allotted timber resources on the reservation. Under the General Allotment Act the lands were to be held in trust status for 25 years. The allotment policy was brought to a close by the Howard-Wheeler Act of 1934.[12] The act recognized the general failure of the allotment policy and left Indian lands in trust status until Congress directed otherwise.

We may now begin an analysis of the first main area of consideration, the standard of care required in Bureau timber administration.

The "Punctilio of Honor"

It is the purpose of this section to demonstrate that the government must manage Indian trust property with the same standard of care imposed upon a

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See footnotes on pp. 545–47.

private trustee. These private law standards are justified as a policy when a dependent people are made the wards of a sophisticated trustee whose duty it is to protect the financial resources of the beneficiary.

Trust law imposes duties on a trustee in the exercise of his power which if breeched will render him liable for any consequent losses. Those duties immediately relevant are the duty to exercise reasonable care and skill in administrating the trust and the duty to preserve the trust property.

New York has adopted a theory of fiduciary standards that approach absolute liability.[13] The United States Supreme Court's landmark decision in *Seminole Nation v. United States*,[14] adopted the rigorous standard promulated by Cordozo in *Meinhard.* Mr. Justice Murphy explained the government's trust duty toward the Indian in these words:

> Furthermore, this court has recognized the distinctive obligation of trust incumbent upon the Government in its dealing with these dependent and sometimes exploited people. E.g., *Cherokee Nation v. Georgia*, 5 Pet. 1; *United States v. Kagama*, 118 U.S. 375; *Choctaw Nation v. United States*, 119 U.S. 1; *United States v. Pelican*, 232 U.S. 442; *United States v. Creek Nation*, 295 U.S. 103; *Tulee v Washington*, 315 U.S. 681. In carrying out its treaty obligations with the Indian tribes, the Government is something more than a mere contracting party. Under a humane and self imposed policy which has found expression in many acts of Congress and numerous decisions of this Court, it has charged itself with moral obligations of the highest reponsibility and trust. Its conduct, as disclosed in the acts of those who represent it in dealings with the Indians, should therefore be judged by the most exacting fiduciary standards. . . [quoting Justice Cardozo in *Meinhard* Supra.] [15]

This standard has been developed in an uninterrupted line of Indian trust cases in the Court of Claims.[16]

It is then clear that with the assumption of the management of Indian resources the United States takes upon itself the demanding equitable duty imposed upon a private trustee. It is incumbent upon the Interior Department to carry its duties of managing and preserving the trust with the "puntilio of honor". It will be demonstrated in the materials which follow that the Bureau of Indian Affairs conduct has fallen far short of the common law standard and of the statutory duties imposed on Bureau timber sales.

Timber Sales

Prior to 1910 there was very little utilization of timber resources on Indian lands. This was the result of Supreme Court decisions holding that the Indian owners had only a life tenants' interest. Consequently, the only logging allowed was in the process of clearing land for agricultural purposes of the disposing of dead and diseased timber. [17]

The authority for sale of Indian timber was the Act of June 25, 1910. [18]

> The timber on any Indian allotment held under a trust or other patent containing restrictions on alienations may be sold by the allottee, with the consent of the Secretary of the Interior, and the proceeds thereof shall be paid to the allottee or disposed of for his benefit under regulations to be prescribed by the Secretary of the Interior.

Quinault timber sales under this authorization have been almost continuous since the 1920's.

The Bureau of Indian Affairs administers these timber sales under a power of attorney agreement with the individual allottees. Until 1955 the Bureau of Indian Affairs was reluctant to grant fee patents to individual allottees. This policy was justified on the theory that those allottees with highly saleable timber land would seek a fee simple ownership and dispose of the property at the best possible price. This would depress the value of less marketable lands and thereby generate less income for the remaining allottees. The Bureau would also be burdened with a checkerboard pattern of trust lands and be unable to administer the timber on an area wide basis. The result of this is that nearly all of the land in the Crane Creek and Taholah Units has been made subject to power-of-attorney agreements with individual Indians. This applies as well to the 65,000 acres of timber disposed of prior to 1950. On May 16, 1955, the fee-patent policy was changed to allow Indians to easily secure a fee-patent in their individual allotments.[19]

The actual impact of this change of policy in the individual Indian allottees in the Crane Creek and Taholah Units was nominal. Almost all allottees had signed

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power-of-attorney agreements years before sales contracts were actually entered into by the B.I.A. and still longer before they received fee patents. As a result, when a fee patent to the land was received the timber was taken subject to existing contracts.[20] (One result of this, which I will discuss at greater length later, was that many holders of a fee patent discovered they were being forced under pre-existing contracts to accept far less than the true market value of their timber.) The upshot of this is that the majority of the timber on the reservation has been or will be disposed of by the Bureau of Indian Affairs. Of the four general areas on the reservation (i.e. the 65,000 acre unit cut between 1920 and 1950 the Taholah Unit, the Crane Creek Unit, and the Queets Unit) only one has been made available for the disposal by allottees themselves, the 45,000 acre Queets Unit.

Being responsible for the administration of timber lands equivalent to the very biggest privately held tracts of timber in the state, the Bureau decided to administer them in large units. The 65,000 acres disposed of between 1920 and 1955 were sold under a series of fifteen long-term contracts. The Taholah Unit was put under contract to the Aloha Lumber Co. in 1960 (Aloha is now a part of Evans Forest Products). The Aloha contract will expire in 1979. The Crane Creek Unit was put under contract to Rayonier, Inc. (now ITT-Rayonier) in 1953. The Rayonier contract expires in 1986.[21]

Before letting bids the Bureau of Indian Affairs estimated the value of the Taholah Unit at $5,885,500 and the Crane Creek Unit at $7,209,550. The former required a deposit with the bid of $177,000 and the latter $217,000. (In 1949, Rayonier forfeited a deposit of $163,000 on the Crane Creek timber but later decided to buy it.) Disposing of the land in such large blocks prevented all but the largest timber companies from bidding, (Rayonier, for instance, was the only company to offer a bid for the Crane Creek Unit), and was intended to secure a median price for the timber on each allotment that would be above the actual value of lower quality timber on certain allotments and below the value of the highest grade timber allotments on the reservation.

The trust administration carried out under the authority of the Act of June 25, 1910[22] is regulated by the Code of Federal Regulations.[23] The objectives of Bureau timber management are stated in this fashion:[24]

> (a) The following objectives are to be sought in the management of unalloted Indian forest lands in accordance with the principles of sustained yield:
>
> (1) The preservation of such lands in a perpetually productive state by providing effective protection, by applying sound silviculture principles to the harvesting of the timber, and by making adequate provision for new forest growth as the timber is removed.
>
> (2) The regulation of the cut in a manner which will insure . . . a perpetual forest business . . .
>
> (5) The preservation of the forest in its natural state whenever it is considered, and the authorized Indian representatives agree, that the recreational or aesthetic value of the forest to the Indians exceeds its value for the production of forest products . . .
>
> (7) (b) Similar objectives are sought in the management of allotted Indian forest lands . . . The Secretary shall take into consideration, among other things:
>
> (1) The state of growth of the timber and the need for maintaining the productive capacity of the land for the benefit of the owner and his heirs.
>
> (2) The highest and best use of the land, including the advisability of devoting it to other uses for the benefit of the owner and his heirs.
>
> (3) The present and future financial needs of the owner and his heirs.

Under these guidelines the scale of the timber is carried out under master timber contracts between the Bureau and the companies, and individual allotment contracts[25] which provide for a trustee's administration fee of from 5–10% of the value of the sale pursuant to 25 C.F.R. 141. 18. Timber prices are determined according to an elaborate schedule for each species which is subject to quarterly adjustment. Also incorporated by direct reference are the United States Indian Service-Forestry Branch General Timber Sale Regulations, a six page guideline to approved forestry practices which was promulgated in 1920.

See footnotes on pp. 545–47.

Problems

THE INTEREST CHARGE

In 1955, the Bureau of Indian Affairs and the Rayonier and Aloha Companies agreed to levy an interest charge against Indian timber because of the extensive advance sums paid to Indian allottees. No such charge was agreed to in the original contracts and it appears to have been a somewhat unique practice. Contrary to general commercial practice, the seller of the timber (individual allottees) paid the interest charge on the loan which the purchaser (Rayonier and Aloha) took to pay for the timber.

Rayonier for instance was required to make advance payments in excess of $3,000,000 to allottees and borrowed money to do so. These advance payments in accordance with the contracts amounted to 25% of the estimated value of the timber within 30 days after approval of the contract (by the Secretary) on any allotment. An additional 15% was to be paid within three years and another 10% within six years. On January 1, 1955, the Bureau began to subtract the cost of the companies' loans from the amount advanced the allottees.

These costs appeared in the stumpage price adjustments of October 1, 1955 and April 1, 1957 after which they were discontinued. "It is noteworthy in this regard that although the interest allowance was initiated well after the contracts were approved, the allowance was based on the recovery of interest from the[26] beginning of each contract. Thus, interest was actually applied retroactively."

Interest was levied at a 5% rate for the Aloha lumber company and at a 4% rate for Rayonier. The interest rate was levied against the volume of timber on each tract with no regard to the value. The resulting charge bore no relation to the money received by the allottee. The payments were highest for the allottees whose timber was first cut and would disappear in the latter years of the contract. An allotment value at $10,000 which would be cut within one year after the contract went into effect, and calling for a $2,500 advance payment, could have the payment reduced after interest charges to $550. If the timber cut exceeded the estimate by 50% the allottee could be $450 in the hole. No interest would be charged for timber cut after the 20th year of the contract.[27] While the origins of the policy are not clear it seems to have resulted at the behest of the companies involved during renegotiation of stumpage rates in 1955.[28]

In the 1950's, every inquiry into timber management on the Quinault Reservation demanded the repeal of this extraordinary allowance.[29] In spite of the highly questionable nature of this interest allowance, the Bureau vigorously defended it and only dropped it in 1957 in the face of Congressional anger. The Department of Interior pursued recovery of these funds in a somewhat desultory fashion, and on December 3, 1966 agreed to settle a $101,999.60 claim against Aloha for $33,000. The $120,000 claim against Rayonier was settled for $40,000.[30]

The effect on the income of largely indigent allottees can be seen above. The overall cost to the program as a whole was substantial and the sums involved have never been completely restored. More important, the interest allowance policy is typical of the Bureau's lack of concern for the best interests of the allottees in the course of the administration of these contracts. The Bureau has consistently acquiesced to the demands of the timber companies. This is partially attributable to the fact that the companies have pursued their interests more vigorously than the Indian allottees. Government inevitably seems to respond to the best financed and organized interest groups. The most logical way to overcome this difficulty would be to give the managers a financial interest in maximizing profits (this will be discussed at greater length in the conclusion of the paper.)

Ten Percent Deduction—

The Basis and Nature of the Fee: Throughout the life of the Crane Creek and Taholah contracts the Bureau of Indian Affairs has charged an administrative fee for the sale of timber from allotted, unallotted and fee patent lands. This policy is pursuant to the code of Federal Regulations.

> In sales of timber from either allotted or unalloted lands, a reasonable deduction shall be made from the gross proceeds to cover in whole or in part the cost of managing and protecting the forest lands, including the cost of timber sale administration, but not including the costs that are paid from funds appropriated specifically for fire suppression or forest pest control. Unless special instructions have been given by the Secretary . . . there shall be deducted 10 percent of the gross amount received for timber sold

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> under regular supervision, and 5 percent when the timber is sold in such a manner that little administrative expense by the Indian Bureau is required.[31]

The deduction for administrative expenses appears to bear little relation to the actual costs of administering the program. For example in the years 1953–1956 collections from the Quinaults for administrative expenses amounted to several hundred thousand dollars. "While the Quinault Reservation timber was earning approximately $400,000 in revenue for the Government to offset the cost of services, approximately $275,000 may have been expended by the Bureau for the administration of the . . . contracts. The Government may thereby have received $125,000 more than the reasonable cost of the services rendered."[32]

The money received has been transferred to the treasury as a miscellaneous receipt. It could be put to better use. (As I will discuss later, virtually no funds have been expended for reforestation of the reservation.) For example, on Advance payments of $5,000,000 for the Taholah and Crane Creek Units, the $500,000 could be put in an interest bearing account at 3% with withdrawals made to meet administrative costs. At the end of 20 years annual payments of $35,000 could be made and $225,000 would remain in the account.[33]

Whatever the wisdom of the present policy, the withdrawal of funds in excess of the trustees' actual expenses are clearly an inequitable administration of the trust. When the fee is withdrawn from receipts deliberately below market value it is an even more questionable procedure. In partial recognition of this problem the Bureau reduced the administrative fee to 8% in 1968.

Cases

On two occasions it has been argued on behalf of the Quinaults that any administrative fee for timber disposal is unlawful. In 1941, a class suit sought to restrain the Secretary of the Interior from preempting the authority to dispose of Quinault timber and insisted in the alternative that the 10% administration fee was unlawful under the Quinault treaty.[34] It was the plaintiff's contention that the government could not impose a charge that was not specifically allowed by the treaty. This argument was cursorily dealt with by the court, which asserted that the Secretary is authorized by statute to charge an administrative fee and added, "Appellees asserted that their property is immune from charges of this sort by virtue of the 1855 treaty, but we find nothing in the treaty which would be thought to limit the power of Congress in this respect." [35]

At the present time, Horton Capoeman, a noncompetent full-blooded Quinault is engaged in a suit in the Court of Claims to recover moneys deducted from the sale of timber on his land in 1943. The timber on his allotment was logged between 1943 and 1946 having sold for $15,080.80. Mr. Capoeman now seeks to recover the $1,238.87 deducted for administrative expenses.

The government claims that this suit is barred by the statute of limitations which denies jurisdiction to the Court of Claims on any petition filed six months after the claim accrues.[36] It is the defendant's contention that a letter written on January 13, 1956 which described the general and particular contract entered into and the amount received and deducted by the Bureau constituted an accounting which started the statute of limitations running.[37] If this brief and informal letter constituted an accounting would it have this effect?

In this framework the closest decision to the instant case tolled the statute of limitations.[38] In *Dodge* the plaintiff while superintendent of the Osage Indian Agency, paid income taxes on behalf of three noncompetent Indians. The Indians had earned taxable income subject to withholding in their outside employment; the money withheld exceeded the amount due. Dodge mistakenly paid a tax claim against the headright (trust) income of these noncompetent Indians. He paid less than the full amount called for, allowing the excess amount withheld to be used for the remaining tax on the trust income. The I.R.S. agreed to refund the amount paid directly out of the trust but refused to refund the amounts drawn from the excess taxes withheld from wages. The statute of limitations on filing claims against the Commissioner expires in three years from the date the return was filed or two years after the tax was paid. In *Dodge* the claims were filed ten years after the expiration date. The court quoted Harlan F. Stone on taxation of trust funds;

> . . . the Indians accepted it [payment] as a matter of course and as an unquestionable expenditure of their funds by their conservator and guardian acting for the paternalistic Federal Government. The superintendent acted for them because of their recognized incompetency to act for themselves. . . . The Indian is not to blame for this irregular payment, and, if the Government

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> could take advantage of the mistake of its own agent in this regard, it could go just one step further and allow such claims to lapse for increased revenues. It is needless to remark that such a practice would be repugnant toward this dependent people. Having appropriated the funds of its wards under a misapprehension, it should have no hesitancy in returning them.[39]

The court goes on to say that the government cannot take a narrow legalistic view in its decision to tax trust income. Similarly, the statute in this case should not be construed against the plaintiff. If the statute of limitations is overcome Capoeman's suit should be successful.

The plaintiff argues that this suit is squarely within the ambit of *Squire* v. *Capoeman* which decided that the government could not tax Horton Capoeman's long-term capital gain on the same 1943 sale. The General allotment act of 1887 stated that at the end of the trust period the allottee would take his allotment "in fee, discharged of said trust and free of all charge or incumbrance whatsoever." [40] The court held that diminishing the trust value through the imposition of taxes was barred, though Indians are subject to the law in matters not governed by treaties or remedial legislation. The logging on Capoeman's allotment was done at the government's discretion and,

> Once logged off the land is of little value. The land no longer serves the purpose for which it was by treaty set aside to his ancestors, and for which it was allotted to him. It can no longer be adequate to his needs and serve the purpose of bringing him finally to a state of competency and independence. Unless the proceeds of the timber sale are preserved for the respondent, he cannot go forward when declared competent with the necessary chance of economic survival in competition with others.[41]

While a trustee can ordinarily charge his administrative expenses to the trust the language of the Allotment Act forbidding fees and charges has already been so liberally construed that taxes are avoided. Such an expansive interpretation, it is argued, must surely bar the administrative fee. As the Plaintiff points out, Congress specifically excluded any deductions that would amount to a taking of private property in the 1964 amendment to the Secretary's statutory authorization to impose deductions.

If successful this suit, of course, will affect all others similarly situated who would presumably seek restitution for fees charged on all of the allotments logged in the last 50 years. For example, ten percent of the sales in the Crane Creek and Taholah Units would exceed $3,000,000. If such funds were recovered they would go to the individual allottees and would be unavailable for reforestation of the land, which is a contingency suggested by the Western Washington agency and given short shrift by the Bureau. As a result, distribution to the individual allottees is not an undesirable alternative. Particularly in the case of allotted lands the Bureau has felt that the possibility that land could be promptly alienated after reforestation precluded spending any funds that would to to benefit the purchaser. In view of this the highest use of the withdrawn funds would be in restitution to the owners which at least would assure their use on behalf of the Indians.

I think on the merits that Capoeman's claim will be honored. In the alternative, it is axiomatic that he is entitled to the return of fees in excess of administrative costs.[42] While this may be of some benefit to individual allottees it does not answer the larger questions involved. There is still no provision for the rational management of the land to assure a steady income to the allottees. As we have seen the government would be justified in expending the excess fee to preserve the timber resource.

Pricing

The computation of the value of timber to a prospective purchaser is a highly sophisticated process which must take into consideration a wide variety of factors: the distance to market, the cost of reaching the timber, the percentage of usable lumber that will be recovered from a log, operating costs, percentage of waste that is likely to occur and a variety of other factors. The Bureau of Indian Affairs has priced the timber on the Quinault Reservation by the conversion return method, a commonly used method of computing prices for logs. It entails subtracting the cost of production from the estimated sale value of the timber. Under the Crane Creek and Taholah contracts the value of the lumber is derived from a complex determination of the weighted average price per species in the Grays Harbor, Puget Sound, Columbia River market. Various problems have been evident in the Bureau's use of this method.

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In the initial stages of the contracts the Bureau utilized log grades in their pricing substantially lower than those actually taken out of the area. This resulted from the use of obsolete data. In 1957 the overall appraisal was 25% lower than the actual market value of cedar logs and 4% high on hemlock. The resulting loss in value would amount to $190,000 annually to the Indians.[43]

In addition, the computation of expenses in figuring conversion return was far above that of the figures used on adjoining National Forest land. In 1956, for example, the Bureau estimates of overhead compared to Forest Service prices in the Olympic National Forest in the following manner: general administration costs exceeded those used by the forest service by 203%; depreciation allowances were 104% high; payroll taxes and insurance were 52% over; equipment repair was 30% over; hazard reduction ran 19% high; supervision costs were 10% below Forest Service allowances; and fire protection costs were 14% lower. Overall, Bureau cost allowance exceeded that of the Forest Service by 77%.[44] This difference resulted in a price reduction of $5.00 per thousand board feet. Between 1950 and 1957, 188,373,000 board feet of lumber were removed from the Crane Creek and Taholah units. Very roughly, at a reduction of $5.00 per thousand board feet, based on the 1956 overhead, the B.I.A. cost allowances were $941,855 above what the Forest Service would have allowed.

In addition loss of grade has occurred throughout the administration of the contracts. The individual contracts in the two units call for a maximum scaling length of 32 feet. The master contracts (contrary to what was agreed with the allottee) allow logs 40 feet in length to go out of the reservation. This allows the purchaser to establish lower grades and prices on what he takes out. "Many of these [40 foot] logs have clear lengths up to 32 feet or more of their length which would grade peeler No. 1. The remaining length is knotty, however, and the resulting log grade is No. 2." [45] The result is that the company pays less than the value they agreed to with the allottee; before the 1960 inventories it may have meant distortion in Bureau computation of average grade yields in the area.

Until 1966, the value received for individual allotments did not correspond to the value of the timber on the allotment even under the Bureau's somewhat faulty evaluation process. The allottee was paid the value of his timber according to the current prices computed by the Bureau. However, the actual grade yield on his allotment was not taken into consideration. The yield of various quality timber was determined by the overall grade averages of the timber on the reservation.[46] It is doubtful that the averages used were at all accurate. The Bureau worked throughout the 1950's on the statistics of a 1916 timber cruise.[47]

The rationale in not considering the actual yield on an allotment was to secure a fairly consistent price for allottees despite variation in the quality and volume of the timber on their individual allotments. There might be some justification for this in light of the fact that the final result would reflect the total value of the timber on the reservation, but in practice it has not worked out. The 1957 hearings turned up several apologists for this system. At that time Mr. J. L. Forrest, assistant manager of the Northwest Timber Division of Rayonier, Inc. (now a vice president of ITT-Rayonier), was quoted in consultations with the B.I.A. and in his formal statement to the committee as follows,

> Temporarily when we are logging in the better timber, we may get a greater percentage of high grades than those established by the contract.
>
> By the same token the Indian Service knows as well as we do that there are going to be many years of operation in low grade timber where our grade recoveries will be well below those established in the contract . . . They [the Bureau] knew and we knew that some of the stands would be profitable to us and that some would be unprofitable.[48]

Despite their willingness to take much of the timber at below market value, in recent years the companies have not seen their way clear to giving allottees more than market value. After high grading the timber for a decade and a half, the companies were allowed to switch to grade recovery in 1966. It goes without saying that whatever arguments may be advanced against taking the timber out at an average price it is clearly inequitable to allow such a change in pricing. This new policy will result in the trust timber being sold below the agreed price for the reservation as a whole. The Bureau must return to the system of pricing according to reservation averages or recover the true value of the timber removed prior to 1966.

Selling the timber as a large unit not only stifled competitive bidding but resulted in allottees receiving spectacularly low prices for some of the especially high grade timber. For example, the 1957 hearings exposed one allotment that

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sold under supervised sale for $48,000 when the market value may have stood at as much as $92,000. This dramatically illustrates the effect of the average pricing system.[49]

Today the Bureau still estimates timber sales to the large companies at below what smaller buyers are required to buy. For whatever reason the effect has been to stifle Indian entrepreneurs.

In short, I think it has been demonstrated that the Bureau has controlled prices in an inept fashion. While current prices are closer in Forest Service levels, the first ten years of the contract saw several million dollars lost to the allottees and the tribe. The Queets Unit has been more wisely administered in that many operators are harvesting the timber and the prices are higher, but my research has indicated that the Bureau is once again favoring the white timber corporations over the interests of those Indians who desire to harvest their own timber or sell it to other Indians. Part of this stems from the fact that the companies have been allowed to build roads without granting reciprocal access rights.[50] Some companies choose to charge rates so high for road use that individual Indians are unable to harvest their own timber. The wiser policy would be for the government to build roads or alternately to require equal access to private roads. Such a system would also be imperative for a more effective management of the Crane Creek and Taholah operations.[51]

Forest Management

The objectives of federal management of Indian forest lands are summarized as, "The preservation of such lands in a perpetually productive state by applying sound silvicultural principles . . . and by making adequate provision for new forest principles . . . and by making adequate provision for new forest growth. . . . [52] In pursuit of this goal an extensive set of provisions were incorporated into the contracts for the sale of timber on the Quinault Reservation.[53] All sales prior to 1960 incorporated the United States Indian Service—Forestry Branch General Timber Sale Regulations of April 10, 1920, These rules provide in part:

> (13) Young growth will be protected as far as possible in every branch of the logging operations . . . .
>
> (25) The slash resulting from logging operations, including all branches up to four inches in thickness lopped from tops and logs, will at the time of skidding be piled compactly and away. . .
>
> (26) Burning of the slash by the purchaser will be done at such times and in such manner as may be required by the officer in charge. . .
>
> (27) Unsatisfactory disposal of the slash will be cause for the officer in charge to suspend all operations of the purchaser until the unsatisfactory condition is corrected.

In addition, the regulations implicitly provide for the adoption of the volume method of timber regulation on Indian lands.[54] Volume-method regulation requires an estimate of the actual volume of growing stock at any time to determine the quantities that can be removed from the land. In this manner a continuous volume of growing stock is maintained.[55]

Any form of management that is to preserve the timber resource on the Quinault Reservation must, of course, adopt one means or another of sustained yield management.[56] One primary requisite of the volume method of regulation is an inventory of timber resources. While the remaining mature timber is known, at the present time the rate of reproduction on logged lands is unknown. In 1969, three-fourths of the reservation had been logged without any inventory of reforestation rates.[57] In point of fact, there has been little renewal due to slash abatement practices.

Federal regulations require a forest management plan to help in achieving sustained yield.

> For all Indian reservations of major importance from an industrial forestry standpoint, management plans for the forestry resource shall be prepared by the Bureau of Indian Affairs, and revised as needed. The plans shall contain. . . a definite plan of silvicultural management and a program of action, including a cutting schedule, for a specified period in the future.[58]

No such plan exists, but it is a vital prerequisite for any rational management of a timber resource that contributes 11% of the timber produced in Grays Harbor County. An element of any such plan drawn to achieve-volume method timber regulation must be the above-mentioned inventory. For several reasons such an inventory would demonstrate minimal regrowth of logged lumber on many areas of the Quinault Reservation.

See footnotes on pp. 545–47.

Fifty percent of the timber taken out of the reservation in the last 50 years has been old growth western cedar. This variety of aged lumber is particularly susceptible to breakage and waste because of age. As a result large quantities of cedar waste have been left on logged land in this area. While other varieties of timber deteriorate rapidly, cedar is unusually resistant to rot. Therefore, large accumulations of cedar slash mean that there can be little rapid reforestation of trees whose seeds require mineral soil. Leaving slash on the land encourages fires and large areas of the Quinault Reservation have burned on several occasions. This not only endangers standing timber throughout the area, but dries out slash to assure another fire in a short time. The results of a fire do not bring about satisfactory growing conditions for young timber. The problem is compounded by the salvage of waste cedar by shake splitters in the area which creates fine waste particularly suited to burn. At the present time there is a "fantastic slash accumulation" [59] on the Quinault Reservation, (estimated at 5 to 6 times that produced by a careful operation.) As a result substantial areas of the reservation have lain bare for forty years. The Bureau itself recognizes this problem.

Why haven't government regulations on the abatement of slash been carried out? The Bureau has not chosen to force purchasers to clean up the logged land since 1920—initially because it was felt that logging operations were separated to such an extent that there was little danger of a wild fire.[60] Such is not the case today.

Departmental Policy

The Interior Department Solicitor has dealt with the problem of requiring sustained-yield management only obliquely.[61] In the process of the Klamath termination it was held that sustained yield management would not be imposed as a condition of logging operations in the liquidation of Klamath lands. Fair market value, it was felt, could not be the value to those "specially circumstanced."

> We have been informed by forestry technicians in the Department that as a matter of fact to impose a condition that forest property be managed under the salutary but restrictive principles of sustained yield management will result in lowering the price which any buyer would be willing to pay for the timber offered. In view of the additional capital requirements incident to such long range use of an asset otherwise available for immediate resale or exploitation many fewer buyers will be in a position to compete for the offered timber lands, and these would be 'persons specially circumstanced.' This too would reasonably result in a lower price for the offered units. The duty of the Secretary both as trustee of the property in question and as 'supervisor' of the liquidation sales under the termination act is to see that the timber lands are sold in a manner reasonably designed to obtain the best price for the sellers. [Concluding that there was no authority to require sustained-yield management in view of the fact that it would lower the price offered below market value.] [62]

If one ignores the non-sequitur evident in an assertion that the trustee can't reasonably attempt to preserve the property by garden-variety-timber-harvest practices, the Klamath case is still distinguishable. Any such concern at reducing prices is clearly no bar to sustained-yield management on the Quinault Indian Reservation. Termination is not overtly in the wings and the resource should be preserved to provide a continuing source of income. The contracts entered into for disposition of the timber and the Federal Regulations clearly call for sustained-yield management. In the case of the Taholah and Crane Creek Units, the sale itself assured that only "specially circumstanced" companies would undertake the purchase of these huge blocks. Ironically, smaller operators on alienated lands in the Queets Unit have carried out clearing and reseeding operations on thousands of acres. These businesses have not found that such operations were economically unjustifiable on their own land.

Under circumstances largely analogous to the Quinault situation, the Court of Claims has ruled that there is an imperative duty imposed on the United States to assure a well managed and continuing timber resource on reservations where timber is a vital resurce to the community. [63]

At the beginning of the century the Menominee Reservation encompassed one of the richest stands of virgin timber in Wisconsin. In response to pressures emanating from the logging and mill industries, special legislation was passed to allow the timber to be harvested.[64] The sale, of course, was not subject to the current regulations, the Quinault contracts or the General Timber Sale Regulations of 1920.[65] However, the Act of March 28, 1908 had clearly imposed standards of

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See footnotes on pp. 545–47.

timber management not unlike the present regulations. The act set limits on the quantity of timber removed provided that only mature timber would be cut and provided for the use of tribal funds to protect the forest. The scheme would have assured a perpetual harvest of hardwood by utilizing sustained-yield management. The tribe later brought suit [66] claiming that the government violated the terms of the 1908 act by allowing the cutting of immature timber and, ". . . that timber in certain areas . . . was not preserved in compliance with the purpose of the act." [67]

The court found that clear cutting on the reservation had removed all young growth and denuded large areas making it impossible to restore hardwood species that required shade and protection from the wind for successful growth. Though some growth remained it was ". . . not enough so remove the government from liability, since it is clear from the evidence that such reproduction will not develop into a forest fit for profitable cutting for more than 100 years and not then unless nature is kinder than it is ever known to have been." [68]

The purpose of the act was to assure steady revenue to the members of the tribe who lived on the Menominee Reservation and,

> Thus, although the 1908 Act did not in so many words prohibit clear cutting, it did, by plain implication, prohibit the practice of any system of cutting that would be destructive of the forest and prevent that forest from being a continuing income producing asset to the Indians. Again the act did not command in so many words the use of the selective cutting system—yet, having in mind the preservation purposes of the Act, . . . we can only conclude that the language and legislative history of the act point irresistibly to something like the system of selective cutting in the management of the forest.[69]

(The government's mismanagement of the Menominee resources resulted in the imposition of substantial liability.)[70]

The reader is reminded again of the even more explicit requirements for sustained yield management in the Taholah and Crane Creek Units.[71] As such the Menominee case seems pointedly relevant in the Quinault circumstances. There is little reason to think that the courts would refuse to require compliance with the extant regulations or, alternately, award damages for the loss of the resource.

It seems clear that in the face of 50 years of forest management on the Quinault Reservation that the government has negligently disregarded its trust responsibilities. A perpetually productive forest would be salutory not only to the Quinaults but to the economy of the surrounding area as well. Under the present allotment system any judgment would be subject to claims for a pro-rata distribution to the individual allottees. In the absence of overall cooperation for the good of the reservation as a whole little good would be accomplished. However, this would not be impossible to accomplish (see conclusion as well). There is a significant movement at the present time to preserve the tribal way of life among American Indians and if this is a desirable goal the Quinaults must undertake or require the undertaking of the restoration of their timber resources to preserve the ecology and income of the reservation.[72] To achieve an overall program of management, I would suggest the utilization of administrative fees for reforestation (which has been suggested by the Western Washington Agency) or sufficient appropriations to carry out extensive slash removal and reforestation. At the insistence of Congresswoman Julia Butler Hansen limited funds for the reforestation of tribally owned lands have been made available ($90,000 in 1970 and $50,000 in 1971). The tribe itself has contracted to undertake the work involved. The Bureau has been reluctant to carry out reforestation on allotted lands in view of the fact that it could be bee patented and disposed of afterward.

Conclusions

> These Indians have a way of life which this government has seen fit to protect, if not actually to encourage. Cogent arguments can be made that it would be better for all concerned if Indians were to abandon their old customs and habits, and become incorporated in the communities where they reside. The fact remains, however, that they have not done this and that they have continued their tribal life with trust in a promise of security from this government. [73]

Whatever merits there are to preserving the reservation way of life in twentieth century America, it is clear that at this point many Quinaults are dependent on the reservation and are not likely to want to participate or "succeed" in white society. The Quinaults have suffered greatly from an unsuccessful acculturation with white society. The result is an all too typical situation where the primary health problems on the reservation are alcoholism and suicide (particularly a recent upsurge in

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See footnotes on pp. 545–47.

suicide attempts among adolescents). The present rate of unemployment and poverty on the reservation are clear indications of the fact that the majority of reservation Quinaults are, and will continue to be, in desperate straits under the present system of managing their resources. The effective result of the resource management of the last twenty years will be termination. Large areas of the reservation are already alienated, and the tribal leadership is financially unable to recover these lands, though they are actively seeking to do so at this time. One of the soundest social and economic stimulants to the reservation would be an effective program of timber management. It is incumbent upon the responsible agencies to restore this resource and make it a positive force in the Quinault community and an ongoing economic asset for Grays Harbor County.

The basic failure of the management program has been the combination of multiple ownership and overall management. There was little or no historical or equitable reason to assign any given 80 acres to the allottees. The only use of the land was as income producing property. As such, the allottees' income should have come from a per-capita distribution of the profits realized from the reservation as a whole. The decision that forced continued allotment was tragically unwise and has perpetuated the depressed economic condition of the reservation. Under this system the Bureau has had to confront the demands of allottees who are anxious to realize a return from their individual allotment and the requirements of the chosen system of sustained yield management which entails leaving a substantial portion of the timber standing on some allotments for reseeding purposes. These problems are further complicated by the day to day management complexities of multiple ownership; a typical month may see timber taken from 80 to 90 allotments which must be identified and traced through to the point where actual lumber yield is determined. The rational management of the reservation requires a system of overall ownership and control.

The Western Washington Agency has realized part of this problem and proposed consolidating Quinault timber resources. John W. Libby, the former manager of forestry for the Western Washington Agency, drafted a comprehensive proposal for overall timber management in 1962 which has not been acted upon by the Interior Department. In 1962 acquisition of the trust allotments in the Crane Creek and Taholah Units would have cost $25,000,000 (F.M.V.). The cost of cruising the timber before purchase was estimated at $150,000 to $175,000 which it was proposed could be recovered by withholding a pro rata sum of approximately $200 from payments made for individual allotments. The salaries of additional personnel required for the acquisition program were estimated at $180,000 for three years which amount would be recovered in savings under the new program in a few years. It was estimated that by the time the timber purchased in Crane Creek and Taholah units was harvested the entire amount expended could be recovered. These profits would be realized from the continued upward trend in stumpage prices and the rapid volume increase of young, fast growing timber that comprised a substantial portion of the uncut areas. The same timber remains today to a substantial degree. The proposal recognized that a successful management program requires the governmental acquisition of the rights of way on privately built roads. The proprietary entity under the Bureau's proposal would be the Bureau, the Forest Service or the Quinault tribe. While the Forest Service has a better track-record in timber administration, transferring part of the trust management to the Department of Agriculture would probably present unnecessary complications. A tribal corporation or agent with a profit incentive would seem to offer the best chance of maximizing return and assuring a continuous yield. Common ownership would present insurmountable management problems for many of the same reasons that the allotment system has not worked. At the time of the government proposal, the tribe was indifferent to ownership in its own right and may still be; such a program would require extensive consideration of tribal interests and capacities. However, I think that some sort of tribal management is a genuinely feasible proposal.

It must be acknowledged, however, that the tribe has often been indifferent toward its timber resources. (This indifference has been partially responsible for B.I.A. errors. Increasing tribal pressure has made the Bureau more responsive to the best interests of the tribe.) The tribal political structure is also at fault. The only enfranchised allottees (and consequently the only ones who can belong to the Quinault Business Committee, which conducts the business and political activities of the tribe), are the Quinaults themselves. Functioning among the indifference of fellow Quinaults and the impotence of the non-Quinault allottees, some tribal leaders found it personally profitable to encourage the policies that were carried out in the early stages of contracting.

See footnotes on pp. 545–47.

Historically and culturally timber has played a nominal role in the Quinault life style. They are "emphatically fish-eaters drawing their substance almost wholly from the water." [74] The maintenance of the fishing resource, which figures so prominently in the Quinault culture, will be dependent in large part on the cleaning up process in the landed areas of the reservation.

The above factors are an important consideration in setting up a business entity to handle the tribal timber. They do not, of course excuse the Bureau's mishandling of the trust.

Any major reallocation of interests on the reservation would require Congressional action. The Bureau or the tribe should seek this kind of Congressional action. Without it the reservation will end with the whimper of gradual termination.

Whatever long run disposition of the interests in Quinault timber is made, certain actions must be undertaken soon to stem the depletion of the resource.

Remedies

One of the most serious problems facing the Quinault tribe at this time is the 1966 change to grade recovery in the pricing process. The further disposition of timber in this fashion must be restrained and ultimately enjoined permanently. The result of the present policy will be a disposal of the trust assets at far less than their real value. If grade-recovery is to continue, the trustee must seek to recover the true value of the assets sold between 1950 and 1966. If the funds are not restored by the Bureau, the beneficiary must seek redress of this waste of assets.

Further, the Bureau must be compelled to carry out its own regulations for clearing slash from the reservation. It is apparent that such an undertaking at this time would entail the expenditure of large sums. While Congress may well be reluctant to expend the funds required, it is not an impractical answer. The government has realized a profit from their trust administration and in the event that it is not returned to the allottees it can be utilized to attempt reforestation. The Western Washington Agency has itself suggested this on several occasions. To meet the objection to seeding forested lands in the hands of individuals, consolidation of ownership should be considered. If this is not carried out there should either be voluntary authorization of the funds required or a suit to force departmental compliance with the applicable regulations. A judicial decision would bring the imperative nature of this problem before Congress once again.

After cedar slash is removed the present Bureau policy would allow natural reseeding. This method is less preferable than artificial reseeding which the Bureau estimates would cost $75.00 an acre in cedar areas and $25.00 an acre in hemlock areas.

In the alternative, extensive damages should be sought. Timber rights in a reservation are a sufficient interest to form a basis for a claim under the Indian Claims Commission Act.[75] This, of course runs squarely into the problem of distribution among the allottees. The economic interest of the reservation require that the funds be earmarked unalterably for reforestation either under the present system or consolidated ownership.

Any solution to these problems must contend with the fact that many allottees are indifferent to the continuation of the reservation. The Bureau has recently faced the problem of Indian activitists who want the reservation preserved in conflict with those allottees who are more interested in rapid liquidation of their interests. A consolidated ownership program would bring income to those allottees who are still waiting for the harvest of their allotment.

Additionally, the Bureau's recovery of the interest charge against allottee vendors is unsatisfactory. Such a flagrant unjust enrichment requires more than a 33% settlement. The trustee or the beneficiary should seek full recovery. The excess cost allowances between 1950 and 1957 should also be considered for restoration to the trust.

Finally, in the event that there is not a complete recovery of the 10% administration fee, the beneficiaries are clearly entitled to recover fees in excess of actual administrative costs. This is certainly not an unreasonable undertaking under the facts of the instant circumstances.

Solving these problems may well be easier than it appears at first glance. Many allottees have a substantial sense of responsibility toward preserving the timber resource. A committee of allottees engaged in trying to find solutions to timber management problems, have sought and obtained the voluntary cooperation of the Bureau and fee patent owners to prevent the further allienation of land in the

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See footnotes on pp. 545–47.

Queets Unit. Individual owners agreed not to sell their lands or to arrange disposal of the timber without alienating the land.

Whatever course is taken in the next few years, substantial reforms are needed. I believe they can be achieved.

FOOTNOTES

1. 12 Stat. 97.

2. 36 Stat. 857; 25 U.S.C. 406.

3. Problems in the Quinault timber sales were examined by Congressional committees on two occasions in the 1950's. The Senate Subcommittee on Indian Affairs conducted hearings on these problems while Senator Neuberger was chairman in 1957 (cited note 4 infra) and produced a report (note 26 infra) which called for extensive reforms. Some of these were carried out in later years. The Senate Interior Committee Subcommittee on the Legislative Oversight Function included a section on Quinault problems in their report on federal timber sales problems in 1956 (note 27 infra), but a published transcript of those hearings is unavailable. There have been few court cases arising out of the administration of the Quinault timber, but this is typical of the whole area of Indian legal problems.

Nicholas Popoff, then a graduate student in the College of Forest Resources at the University of Washington, completed a study of forest management practices on the Quinault Reservation in 1970. His project started as an attempt to analyze a case study in forest management and resulted in a condemnation of B.I.A. practices.

These are the main sources available to anyone interested in studying these problems in any depth. I have attempted to refer to published materials whenever possible, but it has been necessary to draw on unpublished sources in several instances.

4. The potentially rich timber harvest on the Quinault Reservation was recognized early in the century and under government management an average of 135,000,000 board feet of lumber was cut annually between 1926 and 1930. The depression decreased the demand for timber and from 1931 to 1939 the average amount of timber cut dropped to 50,000,000 board feet per year. From 1940 to 1950 the timber harvest produced an average of 56,000,000 board feet each year. Between 1920 and 1954 the total volume sold or placed under contract was over 3.8 billion board feet. S. Rep. No. 971, 85th Cong. 1st Sess. 3 (1957). (This figure necessarily included estimates of the volume on the Crane Creek and Taholah units which were very unsatisfactory.)

5. Interview with George M. Felshaw, Superintendent of the Western Washington Agency of the Bureau of Indian Affairs, in Everett, Washington, February 22, 1971.

6. 99 of 331 workers were unemployed.

7. A comprehensive plan for the systematic development and conservation of the natural resources of the Quinault Indian Reservation, Sections 7.2 and 7.3 (unpublished proposal of the Quinault Business Committee).

8. Id., Exhibit 1.1

9. Authorized by the Act of March 4, 1911, 36 Stat 1345. The allotment of lands belonging to the Quinaults since Pre-Columbian times to other Indians has been the source of some resentment among the Quinault Indians. See the testimony of the late tribal chairman Cleve Jackson before the Senate Subcommittee on Indian Affairs in 1957. Hearings on Timber Sales—Quinault Indian Reservation—Before the Subcommittee on Indian Affairs of the Senate Committee on Interior and Insular Affairs, 85th Cong., 1st. Sess., at 31 (1957). (Hereinafter cited as Hearings, Quinault Timber Sales).

The 9th Circuit has determined that historically these lands belonged to the Quinaults. *U.S.* v. *McGowan*, 62 F. 2d 955, 957 (1933). The government allotment of Quinault lands to other tribes was sustained in *Halbert* v. *U.S.*, 283 U.S. 753 (1931).

10. 24 Stat. 388, 25 U.S.C. 331 et seq.

11. *U.S.* v. *Payne*, 284 F. 827 (9 Cir. 1922), 264 U.S. 446 (1924).

In determining that the statutory language did not prohibit the distribution of lands unsuited for agriculture of grazing, the Supreme Court reasoned that: "It is not an unreasonable view of the requirement that an allotment shall not 'exceed eighty acres of agricultural or one hundred and sixty acres of grazing land' to say that it was meant simply to differentiate . . . between lands which may be adapted for agricultural uses and lands valuable only for grazing purposes." 264 U.S. 446, 449.

The Court in its eagerness to dispense the allottees their moieties, disregarded the fact that the allotment system was singularly unsuited for the managing of forest land and the inevitable result that the allottees would receive allotments that varied greatly in value. The Bureau's determination that land should not be distributed on this basis on the Quinault Reservation was far more thoughtful.

12. 48 Stat. 984

13. *Meinhard v Salmon*, 249 N.Y. 458, 164 N.E. 545 (1928); In Re Bond and Mortgage Guarantee Co., 303 N.Y. 423, 103 N.E. 2d 721 (1952).

Judge Cardozo in Meinhard spoke as follows: Many forms of conduct permissible in a workaday world for those acting at arm's length, are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior. As to this there has developed a tradition that is unbending and inveterate. 249 N.Y. 458, 463–464.

14. 316 U.S. 286 (1942).

15. 316 U.S. 286, 296–297.

16. *Menominee Tribe v United States*, 101 Ct. Cl. 10 (1944); *Oneida Tribe v United States*, 165 Ct. Cl. 487, cert. den'd., 379 U.S. 946 (1946); *Navajo Tribe of Indians v United States*, 176 Ct. Cl. 502 (1966).

17. *U.S. v Paine Lumber Co.*, 206 U.S. 467 (1907), (right of Indian to timber removed from agricultural lands); cf. *Starr v Campbell*, 208 U.S. 527 (1908), (no right to remove timber when it constitutes chief value of the land).

18. 36 Stat. 857; 25 U.S.C. 406.

19. Hearings, Quniault Timber Sales at 360.

20. Id. pp. 81, 496, 497.

21. Highlights in the Development of the Taholah and Crane Creek Timber Sales 4, April 11, 1960 (unpublished report of the B.I.A.).

22. 25 U.S.C. 406.

23. 25 C.F.R. 141

24. 25 C.F.R. 141.3

25. Examples of individual contracts appear in the Senate records. Hearings, Quinault Timber Sales at pp. 39–54.

26. Letter from F. H. Weitzel, ass't Comptroller General of the United States to the Secretary of the Interior, August 13, 1957. S. Rep. No. 971, 85th Cong. 1st Sess. 73 (1957).

27. Staff of the Senate Subcommittee on the Legislative Oversight Function of the Senate Committee on Interior and Insular Affairs, 84th Cong., 2d Sess., Report on Federal Timber Sales Policies 59 (Comm. Print 1956).

28. Id. p. 38.

29. H.R. Rep. No. 2960, 84th Cong., 2d Sess. 17 (1956); S. Rep. No. 971, 85th Cong., 1st Sess. 7 (1957).

30. I.D., Civ. Apps.: 3168 and 3169, December 3, 1966 (unpublished).

31. 25 C.F.R. 141.18.

32. S.R. Rep. No. 971, 85th Cong., 1st Sess. 48 (1971). In addition, the Indians were charged at a rate of 7.5% for services rendered by the purchasers. The government assumed the responsibility for these services when it proposed timber sales to the allottees. The delegated services included the scaling of logs, running of allotment lines, branding of logs for identification, and fire protection. The costs for these services were substantially above comparable costs on other government operations. S. Rep. No. 971, 85th Cong. 1st Sess. 51 (1957). This practice has since been discontinued and the Bureau has assumed responsibility for these services. It is interesting to note that with the added services the Bureau was still able to reduce the ad-fee by 2% in 1968, see p. 16.

33. S. Rep. No. 971, 85th Cong., 1st Sess. 49 (1957).

34. *U.S. v Eastman*, 118 F. 2d 421 (9 Cir. 1941).

35. Id., p. 425. The administrative charge is authorized by 25 U.S.C. 413.

36. 28 U.S.C. 2501.

37. Specific language referred to is: "The total volume removed from your allotment was 3,257,520 ft. for a total value of $15,080.80. Of this amount $13,841.93 was credited to your individual account and the remainder or $1,238.87 was transferred to the Treasury of the United States for administrative expenses." Letter from John W. Libby, to Horton Capoeman, January 6, 1956.

38. *Dodge v U.S.*, 176 Ct. Cl. 476 (1966),

39. 34 Ops. Att'y Gen. 302, 305 (1924).

40. 25 U.S.C. 348.

41. 351 U.S. 1, 10 (1956).

42. Restatement (Second) of Trusts § 203 (1959).

43. S. Rep. No. 971, 85th Cong., 1st Sess. 21.

44. Id. p. 25.

45. Report on Federal Timber Sales, 67 (Comm. Print 1956).

46. Id. p. 50.

47. The Bureau made extensive inventories of the timber on the Crane Creek and Taholah Units in 1960 and 1961 Rayonier, at least, inventoried the Crane Creek Unit in the early 1950's.

48. Hearings, Quinault Timber Sales; 94, 126 (1957).

49. Id. pp. 77–87.

50. The same problem exists in timber contracts entered into by other government agencies. Falk, *Timber and Forest Products Law*, 309 (1958).

51. Infra at p. 24.

52. 25 C.F.R. 141.3(a)(1).

53. Supra at p. 26.

54. 25 C.F.R. 141.4; Which provides in part, "Cutting schedules shall be directed toward . . . achieving an approximate balance between net growth and harvest during each cutting cycle."

Volume method regulation is one of two common methods of achieving "sustained yield" timber management (i.e. insuring that new timber growth offsets the loss by harvest in any year). The alternative is the area method of regulation which means dividing the forest land into a number of units equalling the years required for harvested timber to restore itself. Harvesting one unit each year will assure productivity. It is best suited to land having timber with regularity of species and age. R. D. Forbes, *Forestry Handbook*, section 4.3 (1956).

55. *Forestry Handbook*, Sec. 4.3 (1956).

56. I must acknowledge my debt in analysis of this aspect of the problem to Nicholas Popoff in his study of forest management principles on the Quinault Reservation. A Study of Management Policies of the Bureau of Indian Affairs on Lands Held in Federal Trust on the Quinault Indian Reservation, March 20, 1970. (Unpublished thesis in the University of Washington Library). (Hereinafter cited as Popoff).

57. Popoff, p. 26.

58. 25 C.F.R. 141.4.

59. Interview with Doctor L. Murphy, College of Forest Resources, the University of Washington, in Seattle, Washington, Jan. 8, 1971.

60. Hearings, Quinault Timber Sales, 104 (1957).

61. *Sale of Klamath Timber Subject to Sustained Yield Management Covenant*, I.D., M–36444, May 10, 1957, (unpublished).

62. Id. p. 2.

63. *Menominee Tribe of Indians* v. *United States*, 117 Ct. Cl. 442 (1950); 91 F. Supp. 917 (Ct. Cl. 1950).

64. Act of March 28, 1908; 35 Stat. 51.

65. Supra at p. 24, and p. 10.

66. Authorized by the Act of April 8, 1938 c. 120 52 Stat. 208.

67. 91 F. Supp. 917, 919.

68. 91 F. Supp. 917, 931.

69. 91 F. Supp. 917, 928.

70. The tragic termination that came in the aftermath of this settlement is discussed by Mr. Deloria in his recent book. Deloria, *Custer Died for Your Sins*, 65–72 (1969).

71. 25 C.F.R. 141.3 (a) (1) and the General Timber Sale Regulations.

72. There is a great concern with the preservation of anadromous fish among the Quinaults and present timber management practices have impaired the return of the fish to their spawning grounds. This results in the loss of an important cultural resource and substantial amount of income.

73. Justice Black dissenting in *F.P.C. v. Tuscarora Indian Nation*, 362 U.S. 99, 141 (1960).

74. *Halbert v. U.S.*, 283 U.S. 753, 757 (1931).

75. 25 U.S.C. 70; See also *Federal Indian Law* (1958), p. 657.

4. Letter to Senator Edward M. Kennedy from Marvin Sonosky Concerning Justice Department Action on Fort Peck Reservation Boundary Problem, Dec. 3, 1971

LAW OFFICES OF MARVIN J. SONOSKY,
Washington, D.C., December 3, 1971.

Hon. EDWARD M. KENNEDY,
Chairman, Senate Subcommittee on Administration,
U.S. Senate, Washington, D.C.

DEAR SENATOR KENNEDY: I read in the newspaper that Assistant Attorney General Shiro Kashiwa, in charge of the Land and Natural Resources Division, Department of Justice, recently testified before your Subsommittee concerning the Department's participation in the protection and defense of *Indian* rights.

I am inclined to agree with Assistant Attorney General Kashiwa's statement that the Department of the Interior seldom asks that the Department of Justice take action, but I do not agree that the Department of Justice has effectively acted where it has been asked to take action.

Last month I testified before the Senate Subcommittee on Indian Affairs with respect to S. 2305, a bill to establish an Indian Trust Counsel Authority. I enclose for the consideration of your Subcommittee my statement and supporting exhibits relating to an example that I submitted to the Senate Subcommittee on Indian Affairs.

The case concerns the title to the bed of the Missouri River where it forms a segment of the boundary of the Fort Peck Indian Reservation, Montana. In the first part of 1964, the Department of the Interior asked the Department of Justice to take action. While the Department of Justice has instructed its United States Attorney at various times to file suit, nothing has ever happened. More than seven years have gone by. This can hardly be called effective advocacy.

Kind personal regards.

Sincerely,

MARVIN J. SONOSKY.

Enclosures.

SUPPLEMENTAL STATEMENT OF MARVIN J. SONOSKY

I bring to the attention of the Committee an example relating to the Assiniboine and Sioux Tribes of the Fort Peck Reservation, Montana, that confirms the need of Indian tribes for counsel independent of the Department of the Interior and the Department of Justice.

The Missouri River forms one boundary of the Fort Peck Reservation. In 1916 by avulsive action a portion of the bed was abandoned and became fast land. In 1952–53, when potential oil and gas values stimulated interest in the bed of the river, the question arose as to whether the United States held title to the bed in trust for the Tribes or whether title passed to the upland riparian owner. Most of the upland had been allotted and most of the allotments had passed out of trust status.

In response to the inquiry from the oil and gas industry, the Commissioner of Indian Affairs in 1953 ruled that title passed to the riparian owner and industry was so informed. (See Exhibit No. 1.) The Tribes were not informed of this action. This was an example of the administrative disposition of tribal rights without notice to the Tribes and without affording them an opportunity to be heard.

After I was retained by the Tribes, I learned of this action and brought the matter to the attention of the Commissioner of Indian Affairs.[1] The Solicitor for the Department of the Interior issued an opinion dated December 11, 1962 holding that the bed of the river went to the upland owner, not the Tribes.[2] Thereafter, on July 24, 1963 at the direction of the Tribes, I instituted suit to establish tribal title to the former riverbed. The case is styled *Assiniboine and Sioux Tribes* v. *Budak*, Civil No. 2516 in the United States District Court for the District of Montana.

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[1] Exhibit No. 1—letter dated February 13, 1962, from Marvin J. Sonosky to Commissioner of Indian Affairs.

[2] Exhibit No. 2—Solicitor's opinion dated December 11, 1962.

The suit is a "project" case involving dozens of separate ownerships along the river front. It is expensive litigation. The Tribes have expended substantial sums for abstracts of title and in serving process, and large expenses loom. After suit was filed, I continued informal efforts to have Interior recommend to the Department of Justice that the United States bring an action to settle the issue.

In July 1964 the United States Attorney for Montana informed me that the Departments of Interior and Justice had decided that the United States Attorney should defend the individual Indian owners against the Tribes. The United States Attorney suggested that the Tribes' case be held in abeyance pending institution of suit by the United States against the Tribes to quiet title in the United States as trustee for the individual Indian allottees.[3] While ostensibly for individual Indians, if the United States prevailed, the benefits would fall on the nonIndian owners who had acquired most the allotments by purchase. Nevertheless, with the permission of the tribes, I agreed since such a suit would permit a definitive determination of the issue and at the same time place the burden of proof and expense on the United States. I so advised the United States Attorney on August 7, 1964.[4]

In the more than seven years that have since elapsed, the Department of Justice has not filed suit. During that period I made inquiries at both the Department of the Interior and the Department of Justice. In August 1966 the Department of Justice advised the United States Attorney that:[5]

"We have been actively reviewing this case, and conferring with the Department of the Interior with respect to the appropriate course of action to follow, but have not yet arrived at any conclusion."

A year later, in response to my inquiries, the Department of Justice advised that it was reviewing the question of whether it should act for the individual Indians as first announced, or act for the Tribes. In February 1968, the Department of Justice reversed its position and instructed the United States Attorney to prepare a complaint to quiet title in the Tribes.[6]

In 1970 the Supreme Court of the United States handed down a decision that supported the Tribes' position that they were the owners. *Choctaw Nation* v. *Oklahoma*, 397 U.S. 620 (1970).

In February 1971 I again called on the Department of Justice to tell me whether the United States really intended to go forward on the case, at the same time calling attention to the decision of the Supreme Court.[7] The Department answered that it was waiting for Interior to furnish information.[8] In September 1971 I was informally told that Interior had furnished the information and that the United States Attorney had been instructed to file suit. So far as I know, nothing has happened since.

Thus, even when Interior asks Justice to file suit, and Justice instructs its United States Attorney to file suit, nothing happens. This underscores the need for trust counsel or its equivalent. So far as the Tribes are concerned this example outlines a situation (a) where administrative officers undertook to dispose of tribal property without notice or an opportunity to the Tribes to present their position; (b) where the Department of the Interior chose the position of "allottees" versus the Tribes knowing full well that the major acreage had passed out of allottee ownership and that the benefit of the Government's position would accrue to nonIndian owners; and (c) where the Department of Justice for no valid reason has stalled for over seven years and is still stalling as far as we know.

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[3] Exhibit No. 3—letted dated July 8, 1964, from United States Attorney to Marvin J. Sonosky.

[4] Exhibit No. 4—letter dated August 7, 1964, from Marivn J. Sonosky to United States Attorney.

[5] Exhibit No. 5—letter dated August 25, 1966, from Department of Justice to United States Attorney.

[6] Exhibit No. 6—letter dated February 28, 1968, from Department of Justice to United States Attorney.

[7] Exhibit No. 7—letter dated February 18, 1971, from Marvin J. Sonosky to Department of Justice.

[8] Exhibit No. 8—letter dated February 23, 1971, from Department of Justice to Marvin J. Sonosky.

Exhibit No. 1

FEBRUARY 13, 1962.

Re Tribal title to north half of abandoned riverbed of the Missouri River forming the southern boundary of the Fort Peck Reservation.

Hon. PHILEO NASH,
Commissioner of Indian Affairs, Bureau of Indian Affairs, Department of the Interior, Washington, D.C.

DEAR COMMISSIONER NASH: At the conference held in Assistant Commissioner Fryer's office on Friday, February 2, 1962, it was suggested that I write a letter setting forth the position of the Fort Peck Tribes with respect to the Missouri River avulsion problem on their reservation.

The Fort Peck Reservation was established by the Act of May 1, 1888, c. 213, 25 Stat. 113, 1 Kappler 261. Article IX of the agreement ratified by the 1888 Act fixed the southern boundary of the reservation as Beginning at a point in the middle of the main channel of the Missouri River, opposite the mouth of Big Muddy Creek; thence up the Missouri River, in the middle of the main channel thereof, to a point opposite the mouth of Milk River; * * *. By the Act of May 30, 1908, c. 237. sec. 2, 35 Stat. 553, 3 Kappler 377, provision was made for three kinds of allotments. Each Indian was to receive an allotment of 320 acres of grazing land, heads of families and single adult members over eighteen years were to receive not less than two and one-half more than twenty acres of timberland as an additional allotment, and any irrigable land on the reservation was to be allotted prorata among the members of the tribe in addition to the other two allotments.

Original surveys of the townships bordering on the Missouri River were made at various times commencing with 1903. In 1916, the bed of the river was abandoned by avulsive action of the Missouri River. Around 1952–53, prospective oil and gas values stimulated interest in the abandoned riverbed. In instances where the upland had been allotted, questions were raised as to whether the abandoned riverbed fronting the allotment went with the allotment or whether it remained with the Tribes.

By letter of September 10, 1953 (Land-Minerals, 7453–53), Acting Commissioner W. Barton Greenwood furnished Area Director Fickinger with the principles controlling ownership. He stated:

"* * * Where there was a substantial amount of accretion formed between the time of the approval of the plat of survey and the time of the making of the allotment, the allottee would take only to the meander line as shown on such plat, whether the stream was navigable or non-navigable. In the absence of such substantial accretion and in the absence of anything to show an intention to the contrary, the allottee would take to the middle of the main channel. Solicitor's Opinion M. 27796, May 14, 1935, copy enclosed".

Acting Commissioner Greenwood went on to direct that in each case an investigation would have to be made to determine whether "substantial accretion was formed before or after the allotment was selected, in order to determine the owner of the oil and gas rights in the accreted land * * *". He stated that the rule he was following with respect to accretion was the one discussed in *Madison* v. *Basart*, 59 I. D. 415.

The Solicitor's Opinion M. 27796 referred to by the Acting Commissioner holds that title to a *non-navigable* riverbed passed with the allotment of the upland. The Solicitor there relied on court decisions based on the principle that whether the bed of a *non-navigable* river goes to an allottee depends on the intent of the parties as reflected by the deeds or patents to the allottees and the provisions of the allotment act. The significant point is that the Solicitor and the cases on which he relied dealt only with *non-navigable* streams.

By letter of November 3, 1953, Area Director Fickinger advised the oil companies of the *Greenwood* decision transmitting copies of Acting Commissioner Greenwood's letter dated September 10, 1953, the Solicitor's Opinion of May 14, 1935, and the syllabus of *Madison* v. *Basart, supra,* (see letter dated December 22, 1953, from Area Director Fickinger to William R. Bandy, Regional Chief of Engineering, BLM, Region III, advising of the foregoing transmittal). There is no evidence that this information was communicated to the Tribes. Area Director Fickinger concluded that it has been decided "that the north half of the riverbed will in all cases be assigned to the riparian ownership." (Letter of November 3, 1953, p. 3.)

Following the *Greenwood* letter, the BIA transmitted the matter to the BLM with the request that a survey be made of "all Indian trust lands adjacent to the Missouri River" in designated sections. The survey was to be paid for by the

Tribes. In November 1953, BLM made an investigation and determined that the avulsion had taken place in the spring of 1916 and that there was no evidence "that any substantial amounts of accretion had occurred in front of the old meander lines by the time the avulsive change took place". Memorandum dated November 30, 1953, from Allan E. Arnold, Cadastral Engineer to William R. Bandy, Regional Chief of Engineering, BLM Region III (Group 473 Montana). This eliminated consideration of the rule in *Madison* v. *Basart*, 59 I.D. 415.

Instructions were issued by the BLM for the special survey (Special Instructions dated April 5, 1954, Group 473 Montana, issued by the Billings Office of BLM, Region III). The instructions made plain that "the rules governing the ownership of accretion lands and lands in the abandoned riverbed will be determined by the Bureau of Indian Affairs", that the letter of September 10, 1953, from Acting Commissioner Greenwood controlled and that under that letter "all of the land of the abandoned channel lying on the left or reservation side of the medial line of the abandoned channel, will be assigned to the riparian owner". The surveyors were directed to mark on the ground the line of the abandoned channel as it existed at the time the avulsive change took place in 1916. After this was marked on the ground, the land between the line and the riparian lands on the left side of the river were to be divided into tracts appur. tenant to each legal subdivision or lot of riparian land, by running the side lines-

It is the Tribes' view that the opinion of Acting Commissioner Greenwood was considered and based on inapplicable authority. The decision rested on the 1935 Solicitor's opinion which applies the common law principle and the decisions of the Supreme Court holding that a grant of land bounded by a *non-navigable* river carries title to the center of the stream unless the terms of the grant denote a contrary intention. This principle has no application where the river is navigable.

The Missouri River is navigable. *United States* v. *Eldridge*, 33 F. Supp. 337, 339 (D.C. Mont. 1940). In this case, the reservation was created prior to Montana's admission into the Union. For that reason, title to the north half of the bed of the Missouri River forming the reservation boundary, did not pass to Montana, but remained in the United States in trust for the Tribes. *Montana Power Co.* v. *Rochester*, 127 F. 2d 189, 191 (C.A. 9, 1942); *United States* v. *Stotts*, 49 F. 2d 619, 620–621 (W.D. Wash. 1930); *Taylor* v. *United States*, 44 F. 2d 531 (C.A. 9, 1930); 55 I.D. 475, 476 (1936).

The question here is whether the United States continues to hold title to the riverbed in trust for the Tribes or whether, with the allotment of riparian land, title to the bed passed from the United States in trust for the Tribes to the United States in trust for the allottee. In the case of *non-navigable* waters, the rule is that the bed passes to the riparian owner unless a different intent is expressed. In the case of navigable waters the rule is that title to the bed remains in the "sovereign in trust for the general weal". *Montana Power Commission* v. *Rochester*, 127 F. 2d 189, 191, (C.A. 9, 1942). This rule controls here. The Tribes stand in the place that the State would occupy if the reservation had not been created before statehood.

Public land patents to lands bordering navigable streams convey only to ordinary high water mark. To obtain title to the bed of navigable waters, there must be a grant from the State. As noted by the court in the Montana Power Commission case *ubi supra*, there is no reason for applying a different rule as between a tribe and allottees.

The riverbed belonged to all the people of the Tribes. It was for the common enjoyment of all members and as stated in the *Stotts* case (p. 620) * * * "* * * the allotment of a part of a reservation [riparian allotments] to some of the Indians does not destroy the common right to the enjoyment of the unallotted portion [bed of navigable river] for any use to which it was adapted." The *Montana Power Commission* case, makes special note that "The Indian society is communal in character rather than individualistic and that this was true especially of the hunting and fishing rights". (127 F. 2d 192). Fishing rights, of course, are related related to the waters.

Unfortunately, what has happened here is that the Bureau of Indian Affairs has treated the Missouri River as non-navigable and on that premise has undertaken to dispose of tribal property to the riparian owners.

Prior to my entry in the matter, everything indicated an adamant contention that the riverbed went to the riparian owner. There are recent indicaions that the Area Office has shifted from this positive position to the view that the issue "appears to be a question for determination by a competent court under the laws of the State of Montana." See memorandum dated February 9, 1961, Field

Solicitor to Area Director, re Tract No. 41, BLM Survey Group No. 473. The Area Office advised the Superintendent that the Field Solicitor's opinion was "conclusive as to the action which he considers will be required in the case * * *". A number of the riparian lots have been sold at supervised sale or gone to fee patent. In some instances the purchaser of the riparian lot from the Indian, has applied to the Bureau of Land Management and received a patent to the riverbed section. In my conference in Assistant Commissioner Fryer's office, I stated that I had asked that the Bureau of Land Management issue no further fee patents to land embraced within the northern half of the bed of the Missouri River fronting the Fort Peck Reservation. I find that I was mistaken in my stattement. I have not made such a formal request but do now make it.

There is now before the Solicitor for consideration a proposed mineral claims attorney's contract which would provide the investigation necessary to develop the information needed to take appropriate action to clear the title.

May I suggest that the matter be considered by the Bureau in conjunction with the Solicitor's office as follows:

1. Request the BLM to issue no further patents to the north half of the riverbed of the Missouri fronting the Fort Peck Reservation and direct the Area Office and the agency to suspend the sale of any river sections.
2. The Solicitor to approve the attorney's mineral contract so that the investigative work may proceed.
3. Reconsider and reverse the Greenwood-Fickinger opinion.

Kind personal regards.

Sincerely,

Marvin J. Sonosky.

Exhibit No. 2

U.S. Department of the Interior,
Office of the Solicitor,
Washington, D.C., December 11, 1962.

To: Commissioner of Indian Affairs.
From: Acting Assistant Solicitor, Indian Legal Activities.
Subject: Proposed letter to Area Director, Billings, Montana, regarding ownership of the abandoned channel of the Missouri River fronting allotted lands along a portion of the southern boundary of Fort Peck Reservation.

In connection with oil and gas leasing in and near the Chelsea Slough area on Fort Peck Reservation, a question has been raised as to whether the Fort Peck tribes have an interest in the abandoned bed of the Missouri River fronting individual allotments along a portion of the southern boundary of the reservation. Specifically, the question to be answered is who owns the 15.05 acres of such river bed fronting lot 6, section 2, T. 27 N., R. 49 E., M.P.M., Montana.

The southern boundary of the Fort Peck Reservation, as established by agreement ratified and confirmed by the act of May 1, 1888 (25 Stat. 113), is the middle of the main channel of the Missouri River, extending for approximately 80 miles between Big Muddy Creek and a point opposite the mouth of Milk River. In 1913, the river formed an oxbow along the portion of the reservation boundary here involved, including the part of section 2 on which lot 6 is located. Lot 6 comprised part of an individual allotment approved April 18, 1913, for which trust patent #322210, dated December 17, 1913, issued to the allottee. In 1913, lot 6, containing approximately 41.58 acres of upland, was bounded on the east (because of the bend of the river in this area) by the Missouri River. By avulsive action in 1916, the river abandoned its channel which had formed the oxbow or loop along a number of sections and established a new channel some distance to the south, leaving dry land in most of its former bed. The 15.05-acre tract fronting lot 6 here under consideration was surveyed in 1954 along with other portions of the abandoned river bed and accretions to riparian tracts and is delineated on a plat of survey approved December 13, 1954. It is former river bed land lying between the middle of the old main channel of the Missouri River and the upland as it existed in 1913. If the allotment of reservation lands under trust patent on lot 6 and similarly situated lots bounded by the Missouri River granted land out to the reservation boundary (to the middle of the main channel of the river), then title to the reservation half (left half) of the river bed fronting the allotments vested in the allottees. But if the United States reserved the strip of land comprising the shore and the reservation half of the river bed between the high water line on the left bank and mid-channel, the Government holds this strip of land, including the 15.05-acre tract fronting lot 6, in trust for the Fort Peck tribes.

The proposed letter to the Area Director, Billings, concludes that the tract fronting lot 6 and similarly situated tracts in the abandoned river channel fronting patented upland allotments belong to the owners of the upland. We believe that this conclusion is correct but we are sending these additional comments to supplement some of the statements in the proposed letter and to explain our reasons for concluding that counsel for the Fort Peck Tribes is incorrect in his contention that the navigability of the Missouri River is a basis for holding that the 15.05-acre tract fronting lot 6 was not included in the allotment of lot 6.

At the outset it is emphasized that the question here under consideration in no way involves ownership of the waters of the river, the discussion being confined to the question of ownership of the left half of the abandoned river bed fronting lot 6 out to the boundary line of the reservation, i.e. to the middle of the main channel of the Missouri River as it existed before the 1916 avulsion. We are assuming for purposes of this discussion that there was no substantial change in the river channel at Chelsea Loop between the time the reservation was created in 1888 and the 1916 avulsion, there being no available information to the contrary, and we are assuming also that in 1913 the river was navigable in this area. Where a stream which is a boundary suddenly abandons its old channel by avulsion (rapid or violent and visible change) no change in the boundary results, but the boundary remains in the center of the old channel. *Missouri* v. *Nebraska*, 196 U.S. 23 (1904). Accordingly, the abandonment of the river channel in 1916 in the area of Chelsea Loop did not change the reservation boundary.

In a Solicitor's Memorandum of May 14, 1935, M–27996, which is referred to in your letter, the question raised here, whether title to river bed land passed with the allotment of the upland, was considered and answered affirmatively with respect to upland allotments along the western boundary of the Kaw Indian Reservation in Oklahoma. Deeds for the lands bordering the Arkansas River boundary of the Kaw Reservation contained no express inclusion or exclusion of rights in the river bed. The Department found that in carrying out the allotment acts there was no attempt to dispose of the river bed separately from the upland of the Kaw Reservation and held that under Oklahoma law, conveyance of the riparian tracts along a nonnavigable river granted land to the middle of the stream. The conclusion was based on the principles set forth in *Oklahoma* v. *Texas*, 258 U.S. 574, 594–597 (1922), that where the United States owns the bed of a nonnavigable stream and the upland on one or both sides, it may dispose of or retain all or part of the river bed in disposing of the upland. By statute, treaty, or the terms of a patent, the United States may restrict the conveyance to the upland or to a part only of the river bed, but if its intention is not otherwise shown, the conveyance will be construed and given effect in this particular according to the law of the State in which the land lies. For reasons discussed below, we believe that where, as here, the United States reserved a portion of the bed of a navigable river and the abutting upland in trust as part of an Indian Reservation established in the Territory of Montana before Statehood, and later patented the uplands bordering the river, the intent of the United States as grantor of the uplands determines whether title to the river bed land was conveyed along with the allotment of the upland. The patent to the upland and the terms of the governing statute may show intent. Before discussing these, however, the relationship of navigability of the river to ownership of the river bed will be considered.

Except as previously granted, title to and dominion over the navigable waters and the beds and shores thereof vests in each of the States upon its admission to the Union, subject to the paramount power of the Federal Government over navigation. *Shively* v. *Bowlby*, 152 U. S. 1 ((1894). This general rule is consistent with the rule that the boundary line of a Federal grant of public domain along navigable waters in the various States is the high water mark. Consequently, if a grantee from the United States of public domain upland bordering navigable water in one of the States obtains any rights in the shores (the shore being the land between the lines of high and low water) and the beds of the stream, this is by operation of State law, not by Federal law. *Scott* v. *Lattig*, 227 U.S. 229, 231 (1913). The high water mark limit of upland grants of public domain bordering navigable waters permits each State to adopt its own rules regarding ownership of such waters and of their beds and shores. None of these legal consequences of the navigability of waters is applicable here. Montana was not admitted into the Union until a year after the north half of the Missouri River bordering Fort Peck Reservation was included in the Reservation. Consequently, that portion of the Missouri River within Fort Peck's boundaries did not vest in the State upon its admission into the Union, the State acquired no sovereignty over it by reason of Statehood, and the rules of Montana as to ownership of the shore and beds of navigable rivers are not relevant in determining ownership of the reservation half of the Missouri River unless the United States directs or consents to that result. *United States* v. *Moore*, 62 F. Supp. 660 (D. Wash. 1945).

The significance of navigability of a river in determining ownership of the river bed is that under the laws of some States the rules governing ownership of the beds of navigable waters differ from the rules as to ownership of the shores and beds of nonnavigable waters. But the navigability of a stream, in itself, does not preclude private ownership of its bed. In fact, the common law rule that title to the bed of nontidal though navigable rivers out to the thread of the stream vests in the owners of the uplands, subject to the public right in navigation, has been adopted in many states. *Shively* v. *Bowlby, supra*, p. 31; *Johnson* v. *Johnson*, 95 Pac. 499 (Idaho 1908). Thus, navigability of a river affects ownership of riverbeds only to the extent that State laws so provide, as is evidenced, by way of example, by varying kinds of ownership of the bed of the Mississippi. Under Illinois law, the title of owners of upland granted by the United States along the Mississippi River includes the bed of the Mississippi out to the center or thread of the stream. *Hardin* v. *Jordan*, 140 U.S. 371, 383 (1891), In Iowa, title of owners of upland granted by the United States along the Mississippi extends only to the high water mark and title to the bed of the river is in the State. *Hardin* v. *Jordan, supra*, p. 382–383. It has already been pointed out that the reservation half of the Missouri River along the southern boundary of Fort Peck Reservation did not vest in Montana. Consequently, Montana law as to ownership of the beds of navigable rivers does not affect title to the river bed fronting lot 6 in the absence of some intent to adopt Montana law expressed in the patent from the United States or in the statutory provisions governing this allotment. See *Taylor et al.* v. *United States*, 44 F. 2d 531 (1930). We have found no such intent.

In this connection it is noted that where a patent conveying upland contains no express or implied intent to grant or withhold the portion of the river bed fronting the upland, and no such intent appears in the circumstances under which the patent was issued, including the relevant statutory provisions, the common law rule of ownership of the shores and beds of nontidal, navigable waters determines title to the river bed fronting the upland grant. *United States* v. *Elliott et al.*, 131 F. 2d 720 (10th Cir. 1942). It was pointed out earlier that, at common law, title to the bed of navigable nontidal rivers vests in abutting landowners who are deemed to be owners to the middle of the stream, subject to the public easement of navigation. *Grand Rapids & Indiana R'd. Co.* v. *Butler*, 159 U.S. 87, 92–93 (1895); *Whitaker* v. *McBride*, 197 U.S. 510–512, 516 (1905); 8 *Am. Juris.*, "Boundaries", sec. 32. Consequently, at common law, ownership of the reservation half of the river bed would have been in the owners of the upland whether or not the river was navigable. (See *Oklahoma* v. *Texas* (*supra*); *Grand Rapids & Indiana R'd. Co.* v. *Butler* (*supra*).) Before determining whether the common law rule governs ownership of the 15.05-acre tract here involved, the terms of the patent and the governing statutory provisions must be considered.

The trust patent to lot 6 indicates only that the lot was conveyed in accordance with the plat of survey of T. 27 N., R. 49 E., M.P.M., Montana, dated May 13, 1908. The plat of survey of this township shows lot 6 bounded on the east by the meanders of the left bank of the Missouri River. With exceptions not here relevant, a meander line on a plat of survey is not a boundary line, but is run to show sinuosities of a stream and to determine the quantity of upland in grants bordering water. *Railroad Co.* v. *Schurmeir*, 74 U.S. (7 Wall.) 272 (1868).

Although a designated amount of agricultural, timber, grazing, and irrigable land was to be allotted to each eligible Indian under the statutory provisionshere material (Act of May 30, 1908; 35 Stat. 558), the acreage shown in the patent on lot 6 does not establish whether the river bed fronting the lot was included in the patent because land under water was not ordinarily counted in computing acreage included in patents on uplands. (*Grand Rapids & Indiana R'd Co.* v. *Butler* (*supra*).) Not only was land under water useless for agriculture or grazing, but there was only a small amount of land in the reservation half of the river bed fronting the lot, and it seems doubtful that in 1913 anyone considered that the river bed land had a separate value apart from the upland. These and related considerations discussed in the Solicitor's memorandum, M–27996 (*supra*), indicate that the upland acreage shown in an allotment patent is not evidence of an intent to include or exclude the river bed land fronting the allotment. (In this connection, it is noted parenthetically that a departmental memorandum relating to a public land oil and gas lease offer for land near that here involved states that the Department allowed Fort Peck Reservation allotments for lands "north of the center of the present channel of the Missouri River" (Opinion of the Associate Solicitor, Public Lands, November 19, 1958, M–26539). If similar language is used in any of the papers which your office may have on file relating to the patent to lot 6, it would, of course, give strong support to the conclusion that the river bed land fronting lot 6 was included in the patent. Information available to us about the patent to lot 6 shows no intent either to include or exclude the river bed fronting the lot.

The Act of May 30, 1908 (35 Stat. 558), authorizing the allotment of Fort Peck lands is entitled "An act for the survey and allotment of lands now embraced within the limits of the Fort Peck Indian Reservation, in the State of Montana, and the sale and disposal of all the surplus lands after allotment." The provisions of the Act, like its title, indicate an intent to allot, sell, or otherwise dispose of all of the Fort Peck Reservation lands except such lands as may be reserved under the Act.

Section 3 of the Act specifically authorizes the Secretary to reserve lands for a number of purposes, including agency purposes, and lands so reserved are to remain reserved as long as needed for the benefit of the Indians. Under Section 14 of the Act, lands could be reserved for townsite purposes. If the strip of land between the high water line of the left bank and mid-channel constituting the reservation half of the Missouri River had been reserved under either of these provisions from the allotment or other disposal provisions of the Act, there presumably would be some record evidence of such a reservation and, according to our information, there is none in the patent on lot 6 or otherwise.

Section 2 of the Act provides that all appropriations of the waters of the reservation shall be made under the provisions of the laws of the State of Montana. Since a special express provision is made for reservation waters as distinguished from reservation land, presumably the beds and shores of reservation waters would have been mentioned along with the waters if it had been intended to make them also subject to Montana law. Or if the beds and shores of reservation waters were to be disposed of in a way which differed from the disposition of other reservation lands, they would have been mentioned separately just as separate provision was made for reservation waters. The provision governing the appropriation of reservation waters, in its context, does not include disposition of the reservation half of the Missouri River bed, but indicates an intent that the waters of the reservation shall be separated from the allotment or other disposal of reservation lands, including river bed lands, under the Act. See *Oklahoma* v. *Texas*, 258 U.S. 574, 596 (1922).

In summary, the Act of May 30, 1908, *supra*, contemplates that all of the lands of the reservation were to be disposed of or reserved under one or another of its provisions. There is nothing to indicate that the reservation half of the bed of the Missouri, a narrow strip of land along the southern boundary, was reserved under any of the provisions of the Act or was to be reserved when the adjoining uplands were allotted. Consideration of all of the provisions of the Act strongly supports the conclusion that the beds and shores of reservation rivers, like other reservation lands, were not to be governed by the same statutory provision as that controlling waters of the reservation. Where, under the circumstances here prevailing, the governing statute indicates an intent regarding disposition of river bed land, the statutory intent is controlling. *Oklahoma* v. *Texas*, *supra*, pp. 594–595; see *Taylor et al.* v. *United States*, *supra*. Moreover, the conclusion that there is substantial evidence of a statutory intent to dispose of the strip of land constituting the reservation half of the river bed as part of the abutting upland allotments amounts to a determination that the statute did not depart from the common law rule of ownership of the river bed, discussed herein, which rule would control the outcome here if the patent on the upland or the governing statute showed no intent regarding title to the reservation half of the river bed. Accordingly, we believe that your conclusion is correct that the 15.05-acre tract of river bed fronting lot 6 here involved was not separated and reserved from the grant of the uplands but was conveyed to the allottee along with lot 6, the conclusion being in agreement with the intent of the controlling statutory provisions. It is noted also that this conclusion is consistent with the determination made by the Acting Commissioner of the Bureau of Indian Affairs in connection with the 1954 surveys and resurveys of accretions of the abandoned channel of the Missouri River in Ts. 27 and 28 N., Rs. 49 and 50 E., M.P.M., Fort Peck Indian Reservation. The Special Instructions dated April 5, 1954, for the surveys and resurveys of this land (Group No. 473 Montana) show that the Acting Commissioner had determined in connection with executing the surveys and resurveys that all accretions along the water's edge formed after the lands were allotted and all of the land to the middle of the channel of the abandoned river bed located on the reservation side of the old main channel were owned by the individual allottees of the upland.

CHARLES M. SOLLER,
Acting Assistant Solicitor,
Indian Legal Activities.

EXHIBIT No. 3

U.S. ATTORNEY FOR MONTANA,
Billings, Mont., July 8, 1964.

Re Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana v. Mateiu Budak, et al., Civil No. 2416, Havre-Glasgow Division.

Mr. MARVIN J. SONOSKY,
Attorney at Law,
Washington, D.C.
Mr. JOHN M. SCHILTZ,
Attorney at Law,
Billings, Mont.

GENTLEMEN: The Departments of Justice and Interior have determined that the United States Attorney's office should represent the individual Indian allottees named as defendants in the above-entitled case.

In accord with the position taken administratively by the Department of Interior, the United States will contend that title to the river tracts is in the owners of the contiguous uplands. In the case of the Indian owners this means in effect that the United States will take the position that title to the river tracts is in the United States as trustee for the individual allottees. Whether title to the river tracts is ultimately determined to be in the tribe or in the individual allottees of the contiguous uplands, the legal title is, of course, in the United States as trustee for the tribe or the individual Indians.

It is therefore the position of the United States that it is an indispensable party to any suit to determine title to these lands. It is also immune from suit without its consent; however, the Department of Interior is anxious to have the question of title to these lands determined. The Department of Justice has suggested that you be contacted to ascertain whether you will agree to hold this action in abeyance pending the institution by the United States of an action to quiet the title of the lands in the United States as trustee for the individual Indian allottees. If you will agree to hold your suit in abeyance, we will institute such an action in the near future. Otherwise, we are instructed to file a suggestion of interest in the United States in the present case and move to dismiss it on the ground that it constitutes an unconsented suit against the sovereign.

We will appreciate hearing from you whether or not you will agree to holding this suit in abeyance pending the institution an disposition of a quiet title action to be brought by the United States.

Thanking you for your attention, I am,

Very truly yours,

MOODY BRICKETT,
U.S. Attorney.
RICHMOND F. ALLAN,
Assistant U.S. Attorney.

Exhibit No. 4

AUGUST 7, 1964.

Re Assiniboine and Sioux Tribes v. Budak, et al Civil No. 2416, Havre-Glasgow Division.

MOODY BRICKETT, Esq.,
U. S. *Attorney, Department of Justice,*
Billings, Mont.
(Attention Richard F. Allan, Assistant U.S. Attorney).

DEAR MR. BRICKETT: The Executive Board of the Assiniboine and Sioux Tribes has authorized me to advise you that the Tribes agree to hold this action in abeyance ending the institution and prosecution of the suit by the United States to quiet the title of the United States as trustee for individual Indian allottees.

Kind personal regards.

Sincerely,

(s) Marvin J. Sonosky,
MARVIN J. SONOSKY.

Exhibit No. 5

U.S. Department of Justice,
Washington, D.C., August 25, 1966.

Re: Assiniboine and Sioux Tribes v. Endak, Civil No. 2416

Moody Brickett, Esq.,
U.S. Attorney, Billings, Mont.
(Attention Arthur W. Ayers, Jr., Esq., Assistant U.S. Attorney).

Dear Mr. Brickett: This replies to your letter of July 29, 1966, in which you inquire whether the Department still intends to institute actions on behalf of the individual Indians affected by the above-designated litigation. We have been actively reviewing this case, and conferring with the Department of the Interior with respect to the appropriate course of action to follow, but have not yet arrived at any conclusion. We expect to be able to advise you by the end of September as to our decisions. Please do not take any action in this matter until so advised.

Sincerely,

Edwin L. Weisl, Jr.,
Assistant Attorney General,
Land and Natural Resources Division.
By David R. Warner,
Chief, General Litigation Section.

Exhibit No. 6

February 28, 1968.

Re: Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana v. Matieu Budak, et al., Civil No. 2416.

Moody Brickett, Esq.,
U.S. Attorney, Billings, Mont.
(Attention Arthur W. Ayers, Jr., Esq., Assistant U.S. Attorney).

Dear Mr. Brickett: The above action was initiated several years ago by counsel for the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation for the purpose of quieting in the tribes' title to certain land which are more fully described hereafter. In a letter dated April 7, 1964, we advised you that "it is the position of the Department of the Interior that the beneficial interest in * * * [the lands involved] is in the Fort Peck allottees and their successors in interest and not in the tribes as alleged by the complaint." Accordingly, we requested that you prepare a draft complaint to quiet title in the United States on behalf of the individual Indians to the lands in controversy, and that you arrange with the attorney for the tribes to hold in abeyance the action initiated by the tribes pending the outcome of the suit to be initiated by the United States.

Proceedings in the tribes' action were thereafter suspended, but no complaint was ever prepared pursuant to the instructions in the letter of April 7, 1964, because as the matter continued to be studied, the conclusion that the lands belonged to the individual Indian allottees and their successors in interest appeared to some attorneys here and in the Department of the Interior to be incorrect. Correspondence has been exchanged between the two Departments, and several conferences have been held, and now it is the conclusion of the Department of the Interior that appropriate action should be taken to quiet title to the lands involved in the Fort Peck Tribes rather than in the individual Indian allottees and their successors in interest. We concur in this last conclusion.

The facts of this case, and the applicable law, are as follows:

The Fort Peck Indian Reservation in Montana was established by an agreement with various Indian Tribes ratified and confirmed by the Act of May 1, 1888, 25 Stat. 113. Article IX of the agreement established the middle of the main channel of the Missouri River, between Big Muddy Creek and Milk River, as the southern boundary of the reservation. Montana was admitted into the Union on November 8, 1889.

On May 30, 1908, was passed "An Act for the survey and allotment of lands now embraced within the limits of the Fort Peck Indian Reservation, in the State of Montana, and the sale and disposal of all the surplus lands after allotment." 35 Stat. 558. The Act provided for the allotment to individual Indians of

320 acres of grazing land and from 2½ to 20 acres of timber land, and the reservation of such lands as the Secretary of the Interior may deem necessary for agency, school and religious purposes. The Act directed the President, upon the completion of the allotments, to appoint a commission to "appraise, and value all of said lands that shall not have been allotted in severalty to said Indians or reserved by the Secretary of the Interior," after which the lands "shall be disposed of under the general provisions of the homestead, desert-land, mineral, and town-site laws of the United States" at their appraised value. The net proceeds from these sales were directed to be paid into the Treasury to the credit of the Indian Tribe.

Among the Reservation lands allotted pursuant to this statute were many tracts bordering the Missouri River. In accordance with the usual surveying practice, the riparian boundaries of such tracts were depicted by meander lines, which were used to "close" the tracts for the purpose of computing their area, and the tracts themselves, being less than full legal subdivisions, were designated by lot numbers.

In 1916, the Missouri River avulsively changed its flow, leaving dry its bed in a certain area. In November 1953, the Director of the Billings Area Office of the Bureau of Indian Affairs issued a decision, which was mailed to various oil companies, holding that the individual Indian allottees whose tracts border the Missouri River own to the middle of the main channel of the river. In 1954, at the request of the Bureau of Indian Affairs, the Bureau of Land Management surveyed that portion of the abandoned river bed which was north of its former main channel, and the results of this survey are incorporated in official plats which were approved on December 13, 1954.

It was upon this state affairs that the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation filed their action to quiet in them title to the abandoned river bed, and that the Department of the Interior, stating that its position was that the individual allottees and their successors in interest, rather than the tribes, were the beneficial owners of the uncovered river bed, requested this department to represent those defendants who were holders of restricted Indian patents.

The Interior Department's original conclusion that the bed of the Missouri River to the middle of the main channel passed into the ownership of the individual riparian allottees was based primarily upon the conclusion that the intent of the Act of 1908 was to transfer to individual Indian and non-Indian ownership *all* of the land comprising the Fort Peck Reservation (except for such lands as might be expressly set aside for special purposes), and that to suppose that the strips of land underneath the Missouri River were excepted from the purview of the Act would be inconsistent with, and would do violence to, this legislative intention. In support of this position may be cited *United States* v. *Hayes*, 20 F.2d 873 (C.A. 8, 1927), cert. den., 270 U.S. 552. This case held that the title of Indian riparian allottees, in a situation similar to the instant one, extended to the thread of the Arkansas River, so that no interest or title in the land was reserved in or retained by the Creek Nation, in view of the government's policy to transfer *all* of the land in the reservation into private Indian and non-Indian ownership. The decision specifically noted that the Arkansas River is nonnavigable.

However, as we have already indicated, this first conclusion has been carefully reviewed, and both the Department of the Interior and this Department have now reached a different conclusion, on the basis of *Montana Power Co.* v. *Rochester*, 127 F.2d 189 (C.A. 9, 1942), which held, in another situation similar to the instant one, that the title of the Indian allottees whose lands bordered Flathead Lake in the Flathead Indian Reservation extended only to the high water mark of the lake and that title to land below that mark and beneath the lake is in the United States in trust for the tribes. The decision pointed out that Flathead Lake is navigable, and applied the general rule that patents of the United States to lands bordering navigable waters convey only to the high water mark. The court acknowledged that special circumstances could exist which might warrant the application of a different rule, but stated that such circumstances had not been brought to its attention.

It could be argued, of course, that the *Hayes* case rather than the *Rochester* case controls in the present situation, on the ground that the question is not the *power* of the Government to convey the river-bed, but the *intent* of the Government to convey the river bed. Be that as it may, we have concluded that, since the tribes assert that they own the river bed, since the Department of the Interior concurs in this contention, and since the *Rochester* case appears to support the claim, an action should be initiated to quiet title to these lands in the tribes. We therefore request that you prepare a complaint to quiet title to the river bed lands in the United States on behalf of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, and submit two copies of the complaint to us for our approval before filing. After the filing of the complaint, the action is to be handled primarily by your office.

We would appreciate it if you would also respond to Judge Jameson's letter to you of January 30, 1968, by advising him of our decision to file a complaint in this matter.

Sincerely,

Clyde O. Martz,
Assistant Attorney General,
Land Natural Resources Division.
By David R. Warner,
Chief, General Litigation Section.

Exhibit No. 7

February 18, 1971.

Re: *Assiniboine and Sioux Tribes* v. *Budak, Civil No. 2416.*

Hon. Shiro Kashiwa,
Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, D.C.

Dear Mr. Kashiwa: The Assiniboine and Sioux Tribes brought suit to establish tribal title to the bed of the Missouri River to the middle of the main channel to the extent that the river forms the southern boundary of the Fort Peck Indian Reservation.

The United States has an interest in the case since, if the Tribes are correct, title is vested in the United States in trust for the Tribes. My files disclose that by letter of February 28, 1968, your Department instructed the United States Attorney to prepare a complaint to quiet title and to submit copies for approval before filing. By letter of February 12, 1969, the United States Attorney advised me that he had been instructed to institute suit to quiet title on behalf of the Tribes.

The Supreme Court of the United States handed down its decision in *Choctaw Nation* v. *Oklahoma*, — U.S. — , 25 L. Ed. 615 (April 27, 1970). The decision of the Supreme Court bears out the position taken by the Tribes. I should appreciate it very much if you will advise me whether the United States intends to go forward with this matter since the Tribes' case has been placed in suspense, apparently pending appropriate instructions from your Department to the United States Attorney.

Kind personal regards,

Sincerely,

[S] Marvin J. Sonosky,
Marvin J. Sonosky.

Exhibit No. 8

U.S. Department of Justice,
Washington, D.C., February 23, 1971.

Re: Action to quiet title to portions of the bed of the Missouri River in the Assiniboine and Sioux Tribes.

Marvin J. Sonosky, Esq.,
Washington, D.C.

Dear Mr. Sonosky: This is in response to your letter of February 18, 1971, requesting whether we intend to go forward with an action in the above-identified matter.

On November 9, 1970, we requested the Department of the Interior to identify the parties to be named as defendants in this action, and on January 29, 1971, we inquired as to when its reply was expected. To date we have received no reply.

As soon as this information is received from the Department of the Interior we expect to initiate an action on behalf of the tribes.

Sincerely,

Clyde O. Martz,
Assistant Attorney General,
Land and Natural Resources Division.
By John E. Lindskold,
Attorney.

5. VEEDER MEMORANDUM ON *EAGLE RIVER* CASE

CONFLICTS OF INTEREST IN PROCEEDINGS BEFORE THE SUPREME COURT OF THE UNITED STATES

A PREFACE TO DISASTER FOR THE AMERICAN INDIAN PEOPLE

(By William H. Veeder)

ON CERTIORARI TO THE SUPREME COURT OF THE STATE OF COLORADO—EAGLE RIVER ADJUDICATION, OCTOBER TERM 1970, No. 87; WATER DIVISION No. 5 ADJUDICATION, OCTOBER TERM, 1970, No. 812

SUMMARY

(a) Presidential condemnation of Justice Department's "inherent conflict of interest" respecting American Indians: "No self-respecting law firm would ever allow itself to represent two opposing clients in one dispute; yet the Federal government has frequently found itself in precisely that position. * * * the Indians are the losers when such situations arise * * * the credibility of the Federal government is damaged whenever it appears that such a conflict of interest exists." That inherent conflict of interest within the Justice Department respecting the American Indian rights to the use of water both as to law and fact, is all-pervasive in the Adjudications to which this consideration pertains.

(b) American Indians have direct, immediate and inextricable interests in the *Eagle River* and *Water Division No. 5 Adjudications* before the Supreme Court by reason of the—

1. Subject matter of the litigation—rights to the use of water in the main stream of the Colorado River and its tributaries within the State of Colorado;
2. Erroneous definition used by the Justice Department of the term "Reserved rights" to the use of water and the authorities cited by it;
3. Almost total reliance by the Justice Department upon Indian law respecting rights to the use of water, while denying Indian interest in the proceedings;
4. Precedents which must reasonably be expected from any decision of the Court.

(c) American Indian interest, in addition to those expressed in (b) above include: (1) the expressed willingness to subject the Federally owned rights to the use of water to the State police regulations pertaining to the jurisdiction, adjudication, administration and control of those rights; (2) an apparent willingness to submit the United States to the police regulations on a Statewide basis in regard to the jurisdiction, adjudication, control and administration of rights to the use of water allegedly pursuant to 43 U.S.C. 666, of seven States in the Colorado River Basin alone.

[XIV]* (d) Refusal of the Justice Department to distinguish between Indian private rights to the use of water which are held in trust for the Indians by the United States, and the public rights of the United States—rather including them in definition of "Reserved rights" of the United States—threatens all Indian rights to the use of water by reason of Colorado's Supreme Court ruling, on review before the Supreme Court of the United States, that 43 U.S.C. 666 subjected "Reserved rights" to State police power, State court jurisdiction for adjudication, control and administration.

(e) Specific American Indian Reservations with rights to the use of water in the main stream of the Colorado River and its tributaries within the State of Colorado:

(1) Supreme Court decreed rights in the main stream of the Colorado and its tributaries: Fort Mojave, Fort Yuma, Colorado River, Chemehuevi, and Cocopah Reservations.

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*Pages in original.

(2) Reservations within the State of Colorado with treaty rights to the use of water in the San Juan River and its tributaries: Southern Ute and Ute Mountain Reservations.

(3) Reservations outside of Colorado with rights to the use of water in San Juan River and its tributaries within that State:

(i) Navajo Indian Reservation—Treaty rights; Jicarilla Apache Indian Reservation—Executive Order rights (in States of New Mexico, Arizona, Utah).

(ii) Uintah and Ouray Reservation—Treaty rights in Green River and its tributaries; White River and its tributaries within the State of Colorado (in State of Utah).

(*Note:* Rights of individual Indian Reservations except those decreed by the Supreme Court require separate analysis and presentation)

(f) *Winters Doctrine* American Indian rights to the use of water, interests in real property of highest dignity—private in nature held in trust by the United States for the Indians—for use of the Indians, not the United States:

[XV] (1) Immemorial Indian rights to the use of water—title now resides and at all times resided, in Indians—were not conveyed to the United States—include rights retained by Treaty, by agreement with the United States or otherwise.

(2) Invested rights to the use of water—title originally in Indians, extinguished by the United States, retransferred to the Indians by Executive Order of Congressional action.

(g) Erroneous definition by Justice Department of "Reserved rights" presented to the Supreme Court, if adopted by the Supreme Court, is tantamount to confiscation of American Indian rights not only in the Colorado River Basin but througout the United States.

(h) Invasion and threatened invasion of Indian rights to the use of water:

(1) Colorado River and its tributaries vastly overappropriated with the river yielding far less than originally estimated.

(2) Pollution of Colorado River stemming primarily from over-appropriation.

(3) Central Arizona Project being constructed in total disregard of wholly insufficient water supply for the project and present severely polluted character of Colorado River.

(4) Western U.S. Water Plan—A design for destruction of American Indian Reservations as viable communities.

(i) Denigration by Justice Department of title of American Indian rights before the Supreme Court:

(1) Inherent conflict of interest of Justice Department exemplified in *Eagle River adjudication* and *Water Division No. 5 Adjudication*—the same Assistant Attorney General purports to defend Indian titles while strenuously advocating against Indian titles in claims by Indians for compensation for seizure of their titles—explains erroneous definition of "Reserved rights" of United States allegedly supported by Indian law.

[XVI] (2) Inherent conflict of interest of Justice Department in representing Federal agencies which claim adversely to Indians while it purports to represent Indians.

(j) Failure of Justice Department respecting its interpretation of 43 U.S.C. 666, properly and adequately to represent American Indians before the Supreme Court generally or in *Eagle River Adjudication* and *Water Division No. 5 Adjudication:*

(1) Failure to assert American Indian Tribes immune from suit and that Congress has not waived their immunity from suit as it pertains to Indian rights to the use of water by 43 U.S.C. 666 or otherwise.

(2) Failure of Justice Department to rely upon or refer to Federal Decree which must control, embracing entire drainage of the Colorado River within the State of Colorado—area virtually identical to that within *Water Division No. 5 Adjudication* including *Eagle River Adjudication.*

(3) Failure of Justice Department to deny applicability of 43 U.S.C. 666 on grounds it does not and could not have retrospective operation.

(4) Failure of Justice Department to object to proceedings under 43 U.S.C. 666 by reason of fact United States is not a "necessary" party as required by Congress; there is no case, no conflict, no controversy, no justiciable issue before the Supreme Court or the Courts below.

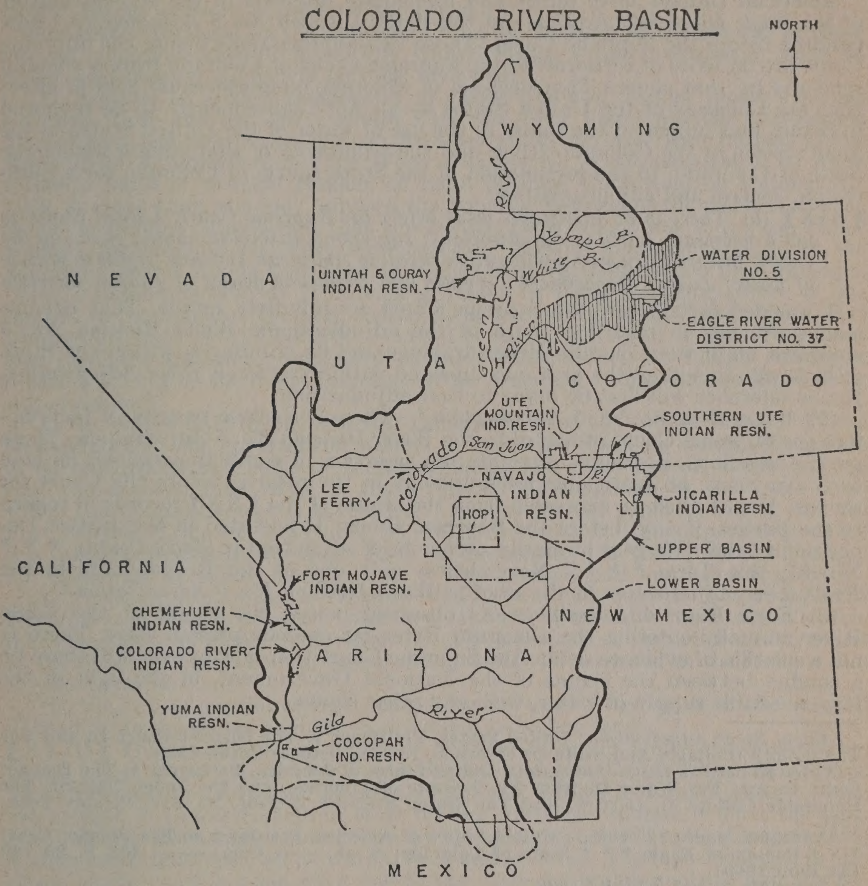
[XVII] INDIAN RESERVATIONS ON THE MAINSTREAM OF THE COLORADO RIVER WITH DECREED RIGHTS IN ARIZONA V. CALIFORNIA

(373 U.S. 546, 596; 376 U.S. 340, 345)

Reservation	Decreed rights annual acre-feet	Decreed acreage
Chemehuevi	11, 340	1, 900
Cocopah	2, 744	431
Yuma	51, 616	7, 743
Colorado River	717, 148	107, 588
Fort Mojave	122, 648	18, 974
Total	905, 496	136, 636

Indian reservations directly involved in adjudications shown on map.

PLATE I—STATE OF COLORADO—UTE MOUNTAIN INDIAN RESERVATION, SOUTHERN UTE INDIAN RESERVATION; STATES OF ARIZONA, NEW MEXICO, AND UTAH—NAVAJO INDIAN RESERVATION, JICARILLA INDIAN RESERVATION, UINTAH AND OURAY INDIAN RESERVATION


COLORADO RIVER BASIN
NORTH
WYOMING
Green River
Yampa R.
White R.
WATER DIVISION NO. 5
NEVADA
UINTAH & OURAY INDIAN RESN.
EAGLE RIVER WATER DISTRICT NO. 37
UTAH
Green River
COLORADO
UTE MOUNTAIN IND. RESN.
SOUTHERN UTE INDIAN RESN.
Colorado
San Juan R.
NAVAJO INDIAN RESN.
LEE FERRY
Colorado
HOPI
JICARILLA INDIAN RESN.
UPPER BASIN
CALIFORNIA
FORT MOJAVE INDIAN RESN.
LOWER BASIN
CHEMEHUEVI INDIAN RESN.
NEW MEXICO
COLORADO RIVER INDIAN RESN.
ARIZONA
YUMA INDIAN RESN.
Gila River
COCOPAH IND. RESN.
MEXICO

Map of The

COLORADO RIVER BASIN

ARIZONA V. CALIFORNIA [373 US 602]

TO WHICH THERE IS ADDED

THE EAGLE RIVER WATER DISTRICT NO. 37

COLORADO WATER DIVISION NO. 5

AND INDIAN RESERVATIONS ON THE MAIN STEM OF THE COLORADO RIVER, THE GREEN RIVER AND THE SAN JUAN RIVER AND THEIR TRIBUTARIES.

BUREAU OF INDIAN AFFAIRS
PHOENIX AREA OFFICE
J.H. JONES MAR. 14, 1971

PLATE I

[XVIII] (*a*) *American Indians have direct, immediate and indispensable interests in the Eagle River Adjudication and Water Division No. 5 Adjudication*

American Indians have direct and immediate interests in the subject matter of the *Eagle River Adjudication* and the *Water Division No. 5 Adjudication* [1] now pending before the Supreme Court. Those two adjudications before the Supreme Court are on writs of certiorari to the Supreme Court of Colorado from a decision rendered by that court.[2] That decision of Colorado's highest court held in effect that the Congress of the United States by an Act [3] subsequently to be reviewed in detail, had subjected the rights to the use of water of the United States in the main stream of the Colorado River and the tributaries of that stream within the State of Colorado, to the jurisdiction of the State courts of Colorado for adjudication, control and administration.[4]

[XIX] (*b*) *There is no justiciable issue before the Supreme Court; United States is not a necessary party to adjudications; sua sponte dismissal should ensue by the Court; failure to dismiss creates grave threat to American Indians' rights to the use of water; Justice Department's cryptic and erroneous denial of Indian interests*

Truncated facts before the Supreme Court are infinitely simple. That circumstance prevails in regard to both of the adjudications. *Water Division No. 5* embraces all of the Colorado River drainage and its tributaries within the State of Colorado including the area encompassed within the *Eagle River Adjudication.* Hence reference will first be made to that adjudication.

(1) *Water Division No. 5 Adjudication.*[5]—There is a grave paucity of facts before the Supreme Court in regard to the *Water Division No. 5 Adjudication.* There are no pleadings; no claims of rights; no assertion of conflicting claims; no case or controversy; no justiciable issue appears in the records before the Court for review. Doubt must be expressed from the status of the [XX] records in regard to the parties, if any, before the Supreme Court. It is stated in the Justice Department brief "We rely primarily on our brief submitted in *Eagle County* * * * No. 87, this Term * * *." Nevertheless only one of the Respondents in the *Eagle River Adjudication* filed a brief in *Water Division No. 5 Adjudication.*[6]

(2) *Eagle River Adjudication.*—As observed below, the runoff of the Eagle River annually entering the Colorado River far exceeds present uses. There is not a scintilla of evidence before the Supreme Court that now or ever will there be a conflict between the claims of the National Government, in the light of the huge available supply of water, with any other claims.

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[1] *Eagle River Adjudication:* United States, Petitioner v. The District Court In and For The County Of Eagle And State Of Colorado, No. 87, October Term, 1970.

Water Division No. 5 Adjudication: United States of America, Petitioner v. The District Court In And For Water Division No. 5, State of Colorado, and the Judge Thereof, The Honorable Clifford H. Darrow, And The Water Rreferee Thereof, No. 812, October Term, 1970.

[2] Appendix, pages 12 et seq.; United States of America, Petitioner *v.* The District Court * * * County of Eagle * * * State of Colorado, et al., —— Colo. ——; 458 P. 2d 760 (En Banc 1969).

[3] Appendix, page 1, 43 U.S.C. 666.

[4] Appendix, page 13.

[5] *Water Division No. 5 Adjudication:* Justice Department recites that on February 11, 1970, a notice pursuant to the Colorado law was received by the Attorney General of the United States. Accompanying the notice was a resumé of recent applications to appropriate rights to the use of water in Water Division 5. The Attorney General was advised if he opposed the applications he should file "a verified statement of opposition." (Appendix, pp. 47 et seq.) In denying a motion to quash service (43 U.S.C. 666) filed by the Justice Department, the trial court stated it was bound by the above mentioned Colorado Supreme Court decision. (Appendix, pp. 50–51) That last mentioned court, based on its decision, denied a Justice Department Petition for a Writ of Prohibition. (Appendix, p. 52) The Justice Department brief in this adjudication to the Supreme Court incorporates by reference much of the *Eagle River Adjudication.* (Appendix, pp. 76, 78 et seq.) Only one of the Respondents from the *Eagle River Adjudication* filed a final brief in this adjudication. It was available for consideration February 16, 1971. (Appendix. pp. 86 et seq.)

[6] *Eagle River Adjudication:* Notice of Supplemental Proceedings of the *Eagle River Adjudication* was served upon the Attorney General; a Justice Department Motion to Dismiss for want of jurisdiction was denied (43 U.S.C. 666) (See appendix, p. 1); a Justice Department Petition for a Writ of Prohibition to the Supreme Court of Colorado was denied by its above mentioned decision declaring the Colorado State court had jurisdiction of the rights of the United States. (Appendix, pp. 10 et seq.. 12 et seq., A Justice Department Petition to the Supreme Court for Certiorari to the Supreme Court of Colorado was granted. (Appendix, p. 19) Respondents describe the Eagle River as a substantial tributary of the Colorado River. Its annual runoff, say Respondents, after all depletions is "408,000 acre feet" entering the Colorado. (Appendix, p. 24 footnote 3) In contrast to the large unused annual runoff, claims of the United States are minuscule and from the record are not asserted to be in conflict with any one. (Appendix, pages 8 et seq.) A Respondent asserts an illusory, unperfected, inchoate 1966 paper claim in the Eagle River without asserting any means of perfecting that illusory paper claim (indeed, there is no indication it is empowered by law to develop the project) or any conflict with the United States which would make it a necessary party. (Appendix, p. 7) Other Respondents do not assert claims, only most vague references without alleging any conflict with the United States. (Appendix, p. 24, footnote 5).

An advisory opinion is sought to "reaffirm" principles of law enunciated over sixty years ago and recently "reaffirmed" by the Supreme Court, primarily in regard to Indian rights. (Appendix, pp. 22 et seq.)

[XXI] From the records, as stated, there are no conflicting rights, no pleadings indicating a conflict with the United States, no case or controversy, no justiciable issue to be resolved by the Supreme Court. Similar to the *Water Division No. 5 Adjudication*, the matter on review is moot. That status of the *Eagle River Adjudication* is not changed by the Justice Department's request, wholly without justification, for an advisory opinion by the Court.

Sua sponte dismissal by the Supreme Court on the basis of the records in these two adjudications should ensue. The United States is not a necessary party to either adjudication, all as will be fully reviewed.

(3) *Requests to Justice Department to advise Court of Indian interests in the Colorado River and tributaries within Colorado.*—For many months the Justice Department has been aware of the vital interests of the American Indians in the *Eagle River Adjudication* and the *Water Division No. 5 Adjudication*. The Agua Caliente Band of Mission Indians at Palm Springs, California, on October 21, 1970, through their attorney, advised the Solicitor General of the perilous course, from the Indians' standpoint, that the Justice Department was following. Other Indians, for example, the Fort Mojave Tribe, likewise made demands upon the Solicitor General, asking that he bring to the Court's attention their vital interests. Other outstanding lawyers representing numerous tribal interests, joined in the request to the Solicitor General. Acknowledgment of the Agua Caliente and Fort Mojave interests by the Solicitor General is now a matter of record. There was also extended testimony presented to the Subcommittee on Indian Affairs in regard [XXII] to the direct interests of the American Indians in the *Eagle River Adjudication*.[7]

On November 6, 1970, the Solicitor General advised the Indian Tribes, "Please be assured that the government intends to make the Supreme Court fully aware of its obligations as trustee of Indian rights in this matter, and of any bearing that the decision may have on those rights." As suggested in the letter from which the quoted excerpt is taken, the Attorney for the Agua Calientes and the Fort Mojave Tribe on November 28, 1970, reviewed and documented in detail the Indian interests in the *Eagle River Adjudication*.[8] (At that time the Petition for Certiorari in *Water Division No. 5 Adjudication* had not been granted.)

(4) *Violation of assurance to Indians—Cryptic denial to Supreme Court by Justice Department of Indian interests.*—January 14, 1971, is the date the Justice Department filed its brief in Water Division No. 5 Adjudication, in which it was to assert to the Supreme Court Indian rights and interests. It accorded to the Indians this cryptic footnote:

"To the best of our knowledge, none of the reserved water rights claimed by the United States in Water Division No. 5 relate to Indian lands." [9]

[XXIII] That statement on its face is without meaning. Quite obviously rights to the use of water claimed for Forest Service and other lands withdrawn by the United States for the public at large would not "relate to Indian lands," which are private in character held in trust for the American Indians.[10] That the footnote falls far short reasonable action by the agents of the Trustee United States is abundantly manifest, all as will be reviewed in detail. The facts reviewed in this phase of the consideration gave rise to the request for this analysis and the authorization for it.[11]

(c) *Justice Department conduct if the two adjudications before the Supreme Court and in the courts below threatens the American Indians in the Colorado River Basin and in all Western United States*

Denigration of the principles of law upon which the American Indian rights to the use of water are predicated is only one phase of the crucial aspects of the adjudications in question. Conduct by the Justice Department in those adjudications, if permitted to continue, can be equally devastating to the rights of the American Indians. Reference is made to Plate I attached to this consideration and Plate II which immediately follows this page. Particular reference is made to data set forth on those Plates, including pertinent quoted Colorado statutes, as they will aid in locating the areas involved in the proceedings before the Supreme Court and the Indian interests within the State of Colorado, the main streams of the Colorado River and the tributary streams within that State.[12]

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[7] Appendix, pages 53, 54–57 ; 59–75 ; 85 ; 40 et seq.

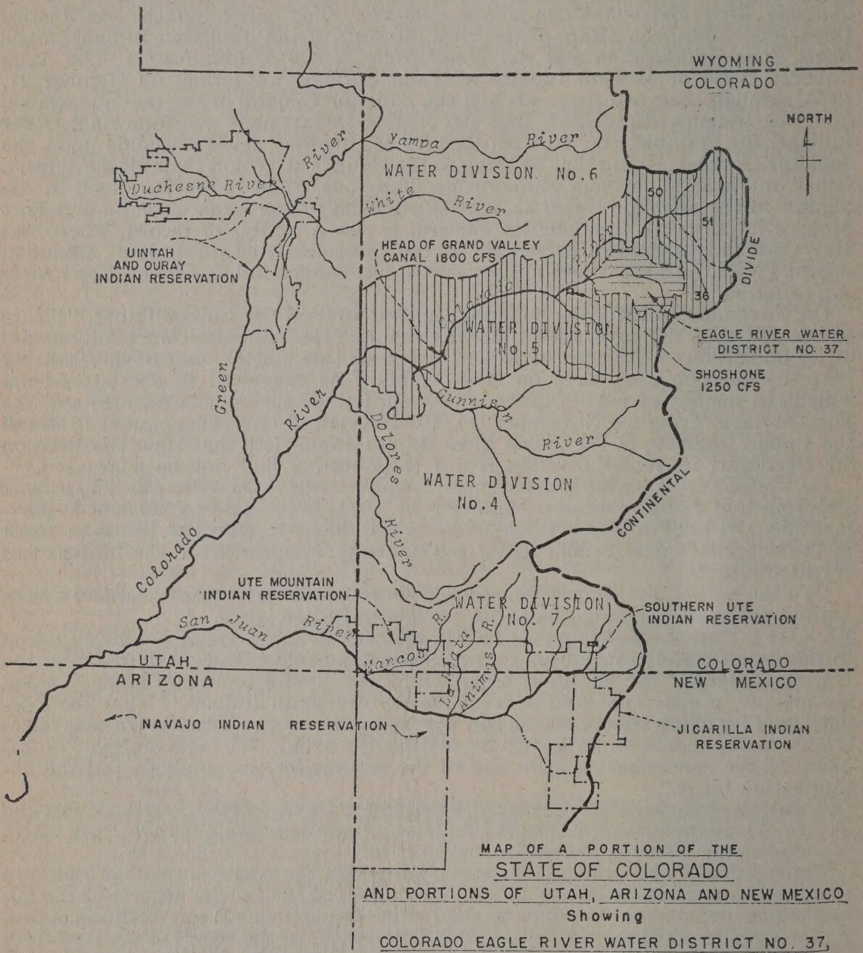
[8] Appendix, pages 63 et seq. ; See also appendix, page 73 in which attorneys for the Arapahoe Tribe in Wyoming, Salish and Kootenai Tribes in Montana, Hoopa Valley Tribe in California, Quinault Tribe in Washington, Tribes in North Dakota, and the National Congress of American Indians, expressed their grave concern over the posture of that case.

[9] Appendix, pages 76, 79, footnote 3—continuation from the above quote—"In the event this Court should rule that 43 U.S.C. 666 subjects federal reserved rights in general to state adjudication, there would remain the further question (not presented by this case) whether the consent statute covers water rights held by the United States in trust for specific Indian tribes—frequently pursuant to treaty—rather than for the benefit of the general public."

[10] See "Legal Principles Respecting American Indian Rights To The Use of Water In General * * *" and related matters, *infra* pp. 37 et seq.

[11] See appendix, pages 82, 83, 84, 85.

[XXIV] PLATE II—COLORADO STATE WATER DIVISIONS


WYOMING
COLORADO
NORTH
Yampa River
River
Duchesne River
WATER DIVISION No. 6
White River
UINTAH AND OURAY INDIAN RESERVATION
HEAD OF GRAND VALLEY CANAL 1800 CFS
Colorado
WATER DIVISION No. 5
50
51
36
DIVIDE
EAGLE RIVER WATER DISTRICT NO. 37
SHOSHONE 1250 CFS
Green
River
Gunnison
River
Dolores River
WATER DIVISION No. 4
CONTINENTAL
Colorado
UTE MOUNTAIN INDIAN RESERVATION
San Juan River
WATER DIVISION No. 7
SOUTHERN UTE INDIAN RESERVATION
Mancos
La Plata R.
Animas R.
UTAH
ARIZONA
COLORADO
NEW MEXICO
NAVAJO INDIAN RESERVATION
JICARILLA INDIAN RESERVATION

MAP OF A PORTION OF THE
STATE OF COLORADO
AND PORTIONS OF UTAH, ARIZONA AND NEW MEXICO
Showing
COLORADO EAGLE RIVER WATER DISTRICT NO. 37,
COLORADO WATER DIVISION NO. 5
And
CERTAIN OTHER WATER DIVISIONS
And
THE UTE MOUNTAIN, SOUTHERN UTE INDIAN RESERVATIONS
IN COLORADO, And
INDIAN RESERVATIONS IN UTAH, NEW MEXICO AND ARIZONA
PLATE II

BUREAU OF INDIAN AFFAIRS
PHOENIX AREA OFFICE
J.H.JONES MAR.7, 1971

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[12] Plates I and II.

Water Division No. 5 Adjudication, October Term, 1970, No. 812

Subject matter: Rights to the use of water in *Water Division No. 5 Adjudication.*

Division 5: Division 5 shall consist of all lands in the State of Colorado in the drainage basins of the Colorado River and all of its tributaries arising within Colorado, with the exception of the Gunnison river; but for the purposes of sections 148–21–10 and 148–21–11 of this article the White river drainage basin shall be deemed a part of division 5. (Vol. 11, Colo. Rev. Stat. 1963, Perm. Cum. Supp. 1969, Sec. 148–21–8(6).)

Eagle River Adjudication, October Term, 1970, No. 87

Subject matter: Rights to the use of water in *Eagle River Adjudication.*

The Eagle River is a substantial tributary of the Colorado River in Colorado. The mainstream is about 65 miles in length, and of numerous tributaries, some 17 totalling an additional 180 miles may be considered major water producers. The system drains 950 square miles and delivers to its confluence with the Colorado River an annual average of about 408,000 acre feet of water after all present upstream depletions. (Appendix page 24, footnote 3.)

Colorado State court proceedings immediately involved but not directly before the Supreme Court

In addition, the Attorney General received similar resumé of applications filed in Water Divisions 4 and 6 during the month of December 1969. (Justice Department Brief, appendix page 48.)

Division 4: Division 4 shall consist of all lands in the state of Colorado in the drainage basins of the Gunnison river and all of its tributaries, the Little Dolores river, the San Miguel river, and that portion of the Dolores river and its tributaries north of the north township line of Township 45 North, New Mexico Principal Meridian. (Vol. 11, Colo. Rev. Stat. 1963, Perm. Cum. Supp. 1969, Sec. 148–21–8 (5).)

Division 6: Except as limited by subsection (6) of this section, division 6 shall consist of all lands in the state of Colorado in the drainage basins of the White river, the Yampa or Bear river, the Green river, the North Platte river, and all of their tributaries. (Vol. 11, Colo. Rev. Stat. 1963, Perm. Cum. Supp. 1969, Sec. 148–21–8(7).)

Indian reservations within purview of cases before Supreme Court: Southern Ute Indian Reservation; Ute Mountain Indian Reservation

Division 7: Division 7 shall consist of all lands located in the southwest corner of the state of Colorado and in the drainage basins of the San Juan river, Rio Piedra, Rio Las Animas, Los Pinos river, La Plata river, Rio Mancos and streams tributary to said rivers and creeks as well as that portion of the Dolores river and its tributaries lying south of the north line of Township 45 North, New Mexico Principal Meridian. (Vol. 11, Colo. Rev. Stat. 1963, Perm. Cum. Supp. 1969, Sec. 148–21–8(8).)

[XXV] American Indians' rights and interests are inextricably interrelated to the decision of Colorado's highest court and the two adjudications to which this consideration is directed. Equally important to the American Indians is the course of conduct by the Justice Department in Colorado's courts in which the adjudications were initiated.

(1) Plate I discloses that five Indian Reservations have rights to the use of water in the main stream of the Colorado River and its tributaries within Colorado. Rights in that river are the subject matter of the *Water Division No. 5 Adjudication;*

(2) Plate I also discloses American Indians within Colorado have vested in them title to rights to the use of water;

(3) Plate I also discloses that American Indians have rights to the use of water in the Green River and its tributaries within the State of Colorado and in the San Juan and its tributaries within the State of Colorado—indeed, American Indians have rights in every tributary of the Colorado River which flows out of the State of Colorado;

(4) Due to their vital interests within Colorado, American Indians and Indian Tribes throughout the arid and semiarid West have just cause for gravest concern over the course of conduct of the Justice Department in these adjudications. For example:

(i) Justice Department in error states to the Supreme Court in the *Eagle River Adjudication:* "Reserved rights have been defined by this

Court as the entitlement of the *United States to use* as much *water* from sources on lands withdrawn from the public domain * * *.'' [13] As presented, that statement, reiterated and repeated throughout the Petitions for Certiorari and briefs filed by the Justice Department, is in total error and gravely trenches upon the principles of Indian law. Throughout the adjudications the Justice Department failed to distinguish between the Indian rights to the use of water which are private in character held in trust by the United States for the Indians, from the "public" rights—for example, those asserted for the Forest Service and Bureau of Land Management in both adjudications on review.[14]

[XXVI](ii) Having failed correctly to state the law to the Supreme Court and to distinguish the American Indian rights held in trust for them by the United States, from the public rights, the Justice Department, without reason or justification, requests the Supreme Court in the pending cases "to reaffirm" the numerous decisions of that Court and others, which preserve and protect the Indians' rights to the use of water. That request to reaffirm was made though the principles in question were not challenged in the proceedings giving rise to the review by the Supreme Court.[15]

(iii) In total disregard of the rights of the Indians in the Colorado River and its tributaries, the Justice Department has offered—albeit cryptically—in clear violation of the American Indian rights to the use of water in the main stream of the Colorado River and its tributaries, voluntarily to "submit itself to the jurisdiction of" the State courts of Colorado for the adjudication, administration and control of its rights within the State of Colorado. Critical nature of that mindless proffer to submit the "reserved rights" of the United States is abundantly manifest when it is recognized that the Justice Department fails throughout the adjudications to distinguish Federal rights from Indian rights.[16]

(iv) American Indians' rights to the use of water are further imperiled by another cryptic announcement to the Colorado courts and to the Supreme Court by the Justice Department. That Department says this in regard to the Act of Congress which Colorado's Supreme Court has interpreted as submitting all of the rights of the National Government to State court jurisdiction for adjudication, control and administration: "Since the United States has water rights throughout entire river systems, such as the Colorado River, it is more likely to be adversely affected by piecemeal adjudications than private parties whose interests are not so widespread." [17] Continuing to imperil the basin-wide rights of the American Indians, the Justice Department tacitly agrees to subject the rights of the United States—without distinguishing the [XXVII] Indian rights—to the jurisdiction of the State courts of Colorado for adjudication, control and administration. It says this to the Highest Court and to the Colorado courts: "* * * where a river system traverses the boundaries of a single State, the United States should not, we submit, be required to assert its rights in any proceeding that is less than statewide in character." [18] Reference is made to Plate I in connection with that tacit offer to accept State court control. From that Plate will be observed the Indian Reservations to which that tacit offer made by the Justice Department to submit the United States to jurisdiction, adjudication, control and administration of State law, might well be applicable. Reference is also made to Plate II disclosing the number of rivers in which the Indians have rights to the use of water which might well come within that wholly unauthorized offer by the Justice Department.

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[13] Appendix, pages 1, 2; See *infra*, page 66 "Denigration Before The Supreme Court of the American Indian Rights To The Use Of Water * * *."

[14] Appendix, pages 1, 2–3; 19, 20–21; See *infra*, page 37, "Legal Principles Respecting American Indian Rights To The Use Of Water In General * * *", particularly page 61.

[15] Appendix, pages 19, 22; See *infra*, page 66 "Denigration Before The Supreme Court of the American Indian Rights To The Use Of Water * * *."

[16] Appendix, pages 10, 11 second full paragraph, 12, 14, where a proffer was made to Colorado's highest court. It will be observed that the Colorado Supreme Court declared it had jurisdiction and outlined the modus operandi where the "reserved rights"—omitting entirely Indian rights—could be allegedly protected. (See Appendix, pages 16 and 17 on which the breadth of the jurisdiction of Colorado's district courts is reviewed in some detail.)

[17] Appendix, pages 1, 5, 6, 22–23.

[18] Appendix, page 23.

> That proffer by Justice to compromise the express language of the Congress in the waiver of immunity from suit,[19] should not be accepted by the Indians, or indeed by the United States, particularly in view of the Supreme Court of Colorado's interpretation of that Congressional Act.[20]

Tacitly to agree, as does the Justice Department, that the Congress under the circumstances where "* * * the United States has water rights throughout entire river systems, such as the Colorado River, * * *" submitted the Nation's rights to the use of water to State control and administration on those interstate streams, for the reach of the river within each single State, is violative of the language of the statutes [21] [XXVIII] and of the cases applying that express language.[22] In the analysis of the Indian rights within the State of Colorado itself, on the main stream and tributaries of the Colorado River outside of Colorado, the impact of the Justice Department's departure from the express language of 43 U.S.C. 666 becomes abundantly apparent.

(*d*) *Justice Department's almost total reliance on Indian law, and other conduct in these adjudications inexorably resulted in the Colorado courts, the Respondents, amici curiae, proceeding on the basis that the Indian rights and their precedents respecting those rights are before the Court for review*

Reference will be made to almost total reliance upon Indian law by the Justice Department in its contention respecting the "reserved rights of the United States." [23] Respondents urge—in total error—that the United States must go back to Colorado's State district court for a determination of all claims—including Indian rights: "At least one reason for the need for such a determination is that most and possibly all reserved rights claimed to exist must be implied if they are to be found at all, * * *." Continuing, Respondents refer specifically to Indian rights as follows: "This Court found in Arizona *v.* California, 373 U.S. 546 that the reserved rights claimed for Indian Reservations had to be implied (at 599), as had been the case in Winters *v.* United States." [24] In an extensive review Respondents discuss in detail [XXIX] Indian rights which are, of course, virtually the only rights in the cases cited under the so-called "reservation theory".

Amicus Curiae briefs of States with large Indian populations, relying heavily upon the *Winters Doctrine*, have been filed.[25] They include: Colorado, Oregon, Nevada, Idaho, Montana and Alaska;[26] Arizona,[27] Utah,[28] California,[29] Oklahoma,[30] Washington,[31] and Wyoming.[32] Washington and Wyoming in their Amicus

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[19] Appendix, pages 1, 2.

[20] Appendix, pages 12, 13, 14, 15: "We are not determining whether the United States has reserved rights in connection with lands withdrawn subsequent to August 1, 1876, the date of Colorado's admission to the Union; nor, if so, whether these rights have priority over previously adjudicated rights. These questions properly should be decided after the United States presents its specific claims for adjudication and the issues of fact and law are clearly drawn."

[21] Appendix, page 1. "* * * Consent is given to join the United States as a defendant in any suit (1) for the adjudication of rights to the use of water of a river system or other source * * *" 43 U.S.C. 666. No power is there vested in the Justice Department to have the Nation's rights in one State subjected to the jurisdiction, control, and administration in that one State, in disregard of its rights downstream.

[22] Appendix, page 79, Miller et al. *v.* Jennings, 243 F. 2d 157, 159 (C.A. 5, 1957); Cert. denied 355 U.S. 827 (1958); (There the United States District Court for the Western District of Texas declared it was without jurisdiction by reason of the fact it did not have before it all parties having rights in the Rio Grande)—Dugan *v.* Rank, 372 U.S. 609, 617–618 (1963); See 293 F. 2d 340.

[23] See footnote 172, *infra* p. 73.

[24] Appendix, pages 24, 26. *Note:* In error the Respondents fail to distinguish between the *Winters Decision* and *Arizona* v. *California*. In the *Winters Decision* the Indians were grantors under the agreement of May, 1888, to the United States, grantee under that agreement. As the Supreme Court states in *Winters*: "The case, as we view it, turns on the agreement of May, 1888 * * *." (207 U.S. 564, 575–576 (1908)). Though no mention was made in that Indian granting agreement to the United States that the Indians retained rights to the use of water in the Milk River, the Supreme Court nevertheless declares that those rights were retained by the Indians, were not granted. Based on that implied reservation by the Indians for themselves, the Court states the admission by the United States of Montana into the Union did not destroy the rights retained by the Indians.

In *Arizona* v. *California* the converse was true with the Nation granting to the Indians and reserving for them in the grant, rights to the use of water in the main stream of the Colorado River sufficient to meet the present and future water requirements of those Reservations, to make habitable their lands, all as decreed by the Supreme Court of the United States, 373 U.S. 546, 595–600 (1963). See Plate I.

[25] Appendix, pages 30 et seq.

[26] Appendix, page 30.

[27] Appendix, page 32.

[28] Appendix, page 35.

[29] Appendix, page 36.

[30] Appendix, page 37.

[31] Appendix, page 38.

[32] Appendix, page 39.

Curiae briefs specifically allude to Indian *Winters Doctrine* rights. Complex questions of Indian rights to the use of water are directly and immediately presented in many of the other State briefs.

It is manifest that the Colorado decision before the Supreme Court for review—in error—makes no distinction between Indian rights and the public rights of the Nation.[33]

[XXX] In the light of all the facts and principles of law reviewed above, it is here reiterated that the Justice Department's failure to make the distinction between the private rights of the Indians, held in trust for them by the United States, and the federal public rights can only be considered frivolous in the extreme. Failure to make that distinction and thus subject the Indian rights to the threat of State law, control and administration, is a disaster of the first magnitude to the American Indians.

(e) *References to American Indian rights to the use of water in the Colorado River and its tributaries*

Interests of the American Indians in the main stream of the Colorado River and its tributaries are graphically displayed by Plate I as it relates to the issues pending before the Court. That map of the drainage area of the Colorado River should be considered in the light of Colorado's Supreme Court decision now on review. In that State court decision, adhering to the Justice Department concepts as advanced to it and the Supreme Court, no distinction is made between the Indian rights to the use of water held in trust for the benefit of them, and the federal rights for public purposes. With specific reference to *Winters* and other Indian decisions, Colorado's State court under the heading "Reserved Rights" says this:

"*Winters* v. *United States, supra,* [458 P. 2d 770] involved water for an Indian reservation reserved prior to the admission of Montana into the Union. It was argued that the subsequent admission of Montana into the Union 'upon an equal footing with the original States' (25 Stat. 676) repealed the reservation of water. This argument was not accepted. We are not concerned here with water rights asserted by the United States prior to Colorado's admission into the Union.

* * * * * * *

"We are not determining whether the United States has reserved water rights in connection with lands withdrawn subsequent to August 1, 1876, the date of Colorado's admission to the Union; **[XXXI]** nor, if so, whether these rights have priority over previously adjudicated rights. These questions properly should be decided after the United States presents its specific claims for adjudication and the issues of fact and law are clearly drawn." [34]

Two aspects crucial to the Indians are created by that explicit ruling of Colorado's Supreme Court, which the Justice Department—if its cryptic statement means anything[35]—without success, seeks to ignore: (1) Under Colorado laws Indian rights are within the purview of its statewide statutes and decisions; (2) Indian rights are within the nationwide purview of the alleged waiver by the Congress of immunity from suit as the issues are presented in the *Eagle River Adjudication* and *Water Division No. 5 Adjudication.*

(1) *San Juan River Drainage, State of Colorado.*—(i) *Southern Ute and Ute Mountain Indian Reservations.*—Plate I and Plate II set forth the drainage area of the San Juan River. It is a principal tributary of the main stream of the Colorado River. It is an interstate stream and has its sources in New Mexico and Colorado. The main stream of the San Juan intersects both the Southern Ute and the Ute Mountain Indian Reservations within the State of Colorado. It will be observed that both Reservations are intersected by several tributaries of the San Juan rising in the State of Colorado.

There has never been a determination by the United States Trustee—or otherwise—of the present and future water requirements of the Southern Ute or Ute Mountain Indian Reservations in either the main stream of the San Juan River or the tributaries of that stream. Present arrangements in regard to some of the water sources for the **[XXXII]** Reservations have been made but are not complete nor the import of them fully known. They are now under study.

(ii) *San Juan River Drainage—Colorado's Water Division No. 7.*—Colorado's Water Division No. 7 includes "the drainage basins of the San Juan River, Rio Piedra, Rio Las Animas, Los Pinos River, La Plata River, Rio Mancos, and streams tributary to said rivers and creeks as well as * * *" portions of the Dolores

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[33] **Appendix, pages 12, 14, 15, 17.**
[34] **Appendix, pages 12, 14, 15.**
[35] **See above, page 8, footnote 16.**

River.[36] Fear of loss by the Southern Ute Tribe of their invaluable *Winters Doctrine* rights to the use of water is a matter of public record.[37]

Application of the laws of Colorado to the Indians' rights either by a judicial declaration in the adjudications in question or the Justice Department policy declarations,[38] presents to the Indians the gravest threat to them since the pronouncement of the Winters Decision in 1908.[39] Full import of the control by Colorado of Indian rights to the use of water, if that comes to pass, is succinctly stated in these terms:

"148–21–17. Administration and distribution of waters.—(1) The state engineer shall be responsible for the administration and distribution of the waters of the state, and in each division such administration and distribution shall be accomplished through the offices of the division engineer as specified in this article.

[XXXIII] "(3) In the distribution of water, the division engineer in each division and the state engineer shall be governed by the priorities for water rights and conditional water rights established by adjudication decrees entered in proceedings concluded or pending on the effective date of this article and by the priorities for water rights and conditional water rights determined pursuant to the provisions of this article. All such priorities shall take precedence in their appropriate order over other diversions of water of the state.'' [40]

It is, of course, elemental that State police regulation over Indian rights to the use of water by Colorado's state engineer is tantamount to control of life on those arid Reservations. Regarding Indian lands in the Colorado River Basin the Supreme Court points up very well in these terms the Indian crisis in these cases:

"* * * the lands were of the desert kind—hot, scorching sands—and that water from the [Colorado] river would be essential to the life of the Indian people * * *." [41]

When the Highest Court thus recently "reaffirmed" the *Winters Doctrine*—Justice Department wants another reaffirmance—the Court was paraphrasing its earlier statement made in 1908 which is as follows:

"The lands were arid and, without irrigation, were practically valueless. And yet, it is contended, the means of irrigation were deliberately given up by the Indians [grantors] and deliberately accepted by the Government [grantee]. * * * Did they [the Indians] give up all this? Did they reduce the area **[XXXIV]** of their occupation and give up the waters which made it valuable or adequate? * * * If it were possible to believe affirmative answers, we might also believe that the Indians were awed by the power of the Government or deceived by its negotiators. Neither view is possible. The Government is asserting the rights of the Indians." [42]

(2) *San Juan River Reservations Outside of the State of Colorado—Navajo and Jicarilla-Apache.*—Plate I and Plate II again are keys to American Indian interests outside of Colorado in the Supreme Court decision from that State, the Justice Department's conduct of the matter and the basic assault upon Indian law respecting their rights to the use of water which is referred to by the Justice Department as "reserved water rights of the United States."

Crucial to the Navajo Indian Reservation in the States of New Mexico, Arizona and Utah, is this fact:

The main stream of the San Juan River traverses the northeast corner of the vast and arid Navajo Indian Reservation in the State of New Mexico, and the south-eastern corner of Utah, constituting the northern boundary of the Navajo Reservation in that State for its entire length after that river leaves the Ute Mountain Reservation in the State of Colorado, and courses almost due west to its confluence with the Colorado River in the State of Utah.

Crucial likewise to the Jicarilla-Apache Reservation in New Mexico is this fact:

[XXXV] Substantial quantities of water in the San Juan River arise upon and flow into that River from that Reservation.

American Indians in the San Juan River Drainage occupying four Reservations in four States are vitally and directly involved in the proceedings before the Supreme Court in regard to

(i) Their titles to rights to the use of water in the main stream and the tributaries of the San Juan River;

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[36] 11 Colo. Rev. Stat. 1963, Perm. Cum. Supp. 1969, Sec. 148–21–8(8).

[37] Memorandum April 9, 1970 to Chairman, Governor or President All Indian Tribes in the Eleven Western States from the Chairman, Southern Ute Tribal Council; Letter March 31, 1970 to Congressman Wayne N. Aspinall.

[38] See above, pages 7 and 8.

[39] Winters v. United States, 207 U.S. 564 (1908).

[40] Appendix, page 86.

[41] Arizona v. California, 373 U.S. 546, 599 (1963).

[42] Winters v. United States, 207 U.S. 564, 575–576 (1908).

(ii) The crucial issues presented by the Colorado Supreme Court's seeming avoidance—albeit in error—of the principles of the *Winters Doctrine* upon which the very existence of the four Reservations is predicated;

(iii) The anomalous request of the Justice Department for a reaffirmance of the *Winters Doctrine*—the "reservation theory"—which was "reaffirmed" as recently as 1963 after years of application;

(iv) The threat that their rights to the use of water will be subjected to the police regulations of the four States, pursuant to which the States administer, adjudicate, and control those rights coming within their respective jurisdictions;

(v) Policy propositions proffered by the Justice Department to the Colorado courts, all as reviewed above.

Total inadequacy of the Justice Department's cryptic footnote to the Highest Court about "no knowledge" of Indian rights and interests is abundantly manifested and underscored as the fact and the law are analyzed.

[XXXVI] (3) *Green River, White River, Yampa River, Tributaries of the main stream of the Colorado River—Uintah and Ouray Indian Reservation—State of Utah.*—Plate I and Plate II disclose the principal sources of water for the Uintah and Ouray Indian Reservation in the State of Utah. It will be observed that the Green River, a major tributary of the Colorado River, and the White River traverse that Reservation. Those facts are of great importance here for the Justice Department in its brief makes this statement to the Highest Court:

"In addition [to purported service in Water Division No. 5] the Attorne General received similar resumes of applications filed in Water Divisions 4 and 6 during the month of December 1969." [43]

Reference is first made to Colorado's Water Division No. 6. It is described as follows:

"* * * all lands in the state of Colorado in the drainage basins of the White river, the Yampa or Bear river, the Green river * * *, and all of their tributaries." [44]

Similar to the Navajo Reservation in New Mexico, Arizona, and Utah, the Uintah and Ouray Reservation is almost wholly reliant upon the rivers in the State of Colorado which are directly or implicitly before the Supreme Court in the *Eagle River* and *Water Division No. 5 Adjudications*. That Reservation is equally threatened by Colorado's **[XXXVII]** Supreme Court decision, the interpretation of 43 U.S.C. 666, and the course of conduct adopted by the Justice Department throughout the entire proceedings in the Supreme Court.[45]

(4) *American Indian rights to the use of water in main stream of the Colorado River and its tributaries within the State of Colorado.*—(i) *Water Division No. 5 Adjudication.*—Magnitude of the importance of the two adjudications before the Supreme Court can readily be observed from Plates I and II when read in the light of the law of the Colorado River of which the Colorado State police regulations respecting rights to the use of water have significance, but far from dominance. Justice Department's presentation to the Supreme Court in its Petition for Certiorari and its briefs filed with the Supreme Court respecting the *Water Division No. 5 Adjudication*, say this: Colorado's "Water Division 5 includes the area drained by the Colorado River and its tributaries (excluding the Gunnison River), which also includes the former Water Division No. 37 in the *Eagle County* case", referred to here as the *Eagle River Adjudication.*[46] Succinctly, there is before the Supreme Court of the United States a decision of Colorado's highest court, the *Eagle River Adjudication* and the *Water Division No. 5 Adjudication*, the primary water source for the main stream of the Colorado River throughout its vast drainage. At issue is whether the courts of Colorado in the exercise of its police power, have jurisdiction and **[XXXVIII]** control over all of the rights of the National Government: "* * * in the drainage basins of the Colorado River and all of its tributaries arising within Colorado",[47] with the exception of the Gunnison River which is likewise involved in another proceeding and will, of course, be subject to the Colorado decision in the absence of its reversal.

(ii) *Eagle River Adjudication.*—In regard to the vast area and the water supply for the Entire Colorado River Basin, is this statement respecting the *Eagle River Adjudication* which under present Colorado law, is included in *Water Division No. 5:*

"The Eagle River is a substantial tributary of the Colorado River in Colorado. * * * The system drains 950 square miles and delivers to its confluence with the Colorado River an annual average of about 408,000 acre feet of water after all present upstream depletions." [48]

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[43] Appendix, pages 47–48.

[44] Vol. 11, Colo. Rev. Stat. 1963, Perm. Cum. Supp. 1969, Sec. 148–21–8(7).

[45] See above, pages 16 through 17 in regard to the San Juan River Drainage, Colorado's Water Division No. 7.

[46] Appendix, pages 47, 48, 76, 77–78.

[47] Vol. 11 Colo. Rev. Stat. 1963, Perm. Cum. Supp. 1969, Sec. 148–21–8(6).

In the analysis of the discharge of the Colorado River and its tributaries at the State line the importance of the huge quantities of water produced by the Colorado River within the State of Colorado—including the Eagle River—will be emphasized. Reference is again made to the brief of the Justice Department from which there is quoted the statement, "In addition, the Attorney General received similar resumes of applications filed in Water Divisions 4 and 6 during the month of December 1966." [49] The import of Water Division **[XXXIX]** No. 6 was alluded to above. Comment is now made respecting Water Division No. 4.

(iii) *Water Division No. 4.*—It is provided under the Colorado law that Water Division No. 4 encompasses "* * * the drainage basins of the Gunnison River and all that portion of the Dolores River and its tributaries north of the north township line of Township 45 North, New Mexico Principal Meridian." [50] Plate I and Plate II locate the Gunnison River which enters the Colorado River within the State of Colorado, It will be noted from those Plates that the Dolores River joins the Colorado in the State of Utah shortly after it crosses the common boundary of the State last mentioned and the State of Colorado.

(iv) *Supreme Court decreed rights to American Indians in the main stream of the Colorado River.*—It has been emphasized above that the Supreme Court of the United States is fully cognizant that the Indian Reservations on the main stream of the Colorado River are not habitable without water from that stream.[51] That Court likewise stated that the Indians have rights to the use of water sufficient "to satisfy the future as well as the present needs * * *" of those Indian Reservations. It measured those rights on the basis of water requirements adequate "to irrigate all the practicable irrigable acreage on the reservations." [52]

[XL] In keeping with that decision the Supreme Court "* * * Ordered, Adjudged and Decreed" Indian rights to the use of water on the main stream of the Colorado for the Chemehuevi Indian Reservation, the Cocopah Indian Reservation, the Yuma Indian Reservation, the Colorado River Indian Reservation, and the Fort Mojave Indian Reservation.[53] Please refer to the facing page of Plate I which tabulates the rights on the main stream of the Colorado River the Supreme Court decreed to the named Reservations.

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[48] Appendix, page 24, footnote 3.

[49] Appendix, pages 47, 48.

[50] 11 Colorado Rev. Stat. 1963, Perm. Cum. Supp. 1969, Sec. 148–21–8(5).

[51] Arizona v. California, 373 U.S. 546, 598–599 (1963).

[52] Arizona v. California, 373 U.S. 546, 600 (1963).

[53] Arizona v. California, 373 U.S. 546 (1963): "IT IS ORDERED, ADJUDGED AND DECREED THAT, I, For purposes of this decree:

* * * * * * *

"(1) The Chemehuevi Indian Reservation in annual quantities not to exceed (i) 11,340 acre-feet of diversions from the mainstream or (ii) the quantity of mainstream water necessary to supply the consumptive use required for irrigation of 1,900 acres and for the satisfaction of related uses, whichever of (i) or (ii) is less, with a priority date of February 2, 1907:

"(2) The Cocopah Indian Reservation in annual quantities not to exceed (i) 2,744 acre-feet of diversions from the mainstream or (ii) the quantity of mainstream water necessary to supply the consumptive use required for irrigation of 431 acres and for the satisfaction of related uses, whichever of (i) or (ii) is less, with a priority date of September 27, 1917;

"(3) The Yuma Indian Reservation in annual quantities not to exceed (i) 51,616 acre-feet of diversions from the mainstream or (ii) the quantity of mainstream water necessary to supply the consumptive use required for irrigation of 7,743 acres and for the satisfaction of related uses, whichever of (i) or (ii) is less, with a priority date of January 9, 1884;

"(4) The Colorado River Indian Reservation in annual quantities not to exceed (i) 717,148 acre-feet of diversions from the mainstream or (ii) the quantity of mainstream water necessary to supply the consumptive use required for irrigation of 107,588 acres and for the satisfaction of related uses, whichever of (i) or (ii) is less, with priority dates of March 3, 1865, for lands reserved by the Act of March 3, 1865 (13 Stat. 541, 559); November 22, 1873, for lands reserved by the Executive Order of said date; November 16, 1874, for lands reserved by the Executive Order of said date, except as later modified; May 15, 1876, for lands reserved by the Executive Order of said date; November 22, 1915, for lands reserved by the Executive Order of said date;

"(5) The Fort Mohave Indian Reservation in annual quantities not to exceed (i) 122,648 acre-feet of diversions from the mainstream or (ii) the quantity of mainstream water necessary to supply the consumptive use required for irrigation of 18,974 acres and for the satisfaction of related uses, whichever of (i) or (ii) is less, and, subject to the next succeeding proviso, with priority dates of September 19, 1890, for lands transferred by the Executive Order of said date; February 2, 1911, for lands reserved by the Executive Order of said date; provided, however, that lands conveyed to the State of California pursuant to the Swamp Land Act [9 Stat. 519 (1850)] as well as any accretions thereto to which the owners of such land may be entitled, and lands patented to the Southern Pacific Railroad pursuant to the Act of July 27, 1866 (14 Stat. 292), shall not be included as irrigable acreage within the Reservation and that the above specified diversion requirement shall be reduced by 6.4 acre-feet per acre of such land that is irrigable; provided that the quantities fixed in this paragraph and paragraph (4) shall be subject to appropriate adjustment by agreement or decree of this Court in the event that the boundaries of the respective reservations are finally determined; * * *."

[XLI] Set forth above and graphically displayed on Plate I and Plate II are the American Indian interests in the main stream of the Colorado River and the tributaries of that stream within the State of Colorado. On the basis of those geographical aspects of this consideration reference will next be made to the equally important hydrological phenomena of the Colorado River and its tributaries.

(*f*) *Seventy percent (70%) of all of the waters in the main stream of the Colorado River available to the Indian Reservations, the rights of which are decreed by the Supreme Court, are within the issues presented to that Court*

Error in the Justice Department's denial of Indian interests in the issues now on review before the Supreme Court is evidenced by this statement by that Court:

> [XLII] "The Colorado River itself rises in the mountains of Colorado and flows generally in a southwesterly direction for about 1300 miles * * * The river and its tributaries flow in a natural basin almost surrounded by large mountain ranges and drain 242,000 square miles * * *. Much of this large basin is so arid that it is, as it always has been, largely dependent upon managed use of the waters of the Colorado River System to make it productive and inhabitable. * * * 2000 years ago the ancient Hohokam tribe built and maintained irrigation canals near what is now Phoenix * * *
>
> American Indians were practicing irrigation in that region at the time white men first explored it." [54]

Dating back to antiquity, and in 1858 when Lieutenant Ives made his historic trip up the main stream of the Colorado River, American Indians were likewise dependent upon the Colorado River to irrigate their crops. Indeed, the Mojaves and others were wholly dependent upon the Nile-like inundation of the Colorado River to irrigate their crops at the time and long prior to when Ives visited them in the year last mentioned.[55] Emphasis is placed upon the fact that the rights decreed to the Mojaves and others by the Supreme Court over 100 years after Ives, relate to the identical lands occupied by those Indians in ancient times.[56]

Historically and today the Indians on the main stream of the Colorado River holding rights decreed to them by the Supreme Court are wholly dependent upon the waters which have their sources in the drainage area embraced withing *Water Division No. 5 Adjudication* [XLIII] which, as stated, includes the drainage area within the *Eagle River Adjudication;* to a lesser extent in Water Division No. 4, No. 6, and No. 7, all of which have been alluded to above and are set forth on Plate No. II.

Under the heading "Average Annual Historic Flows at State Lines * * *" the Upper Colorado River Commission reports: [57]

Colorado:

Historic flow at State lines (acre-feet)	10, 408, 400
Historic contribution to flow at Lee Ferry (percent of total, acre-feet)	72. 18

Relating geography of the Colorado River Basin to the hydrology of that Basin this fact is manifest:

> 70% of all of the water upon which the American Indians in the Colorado River Basin are dependent for their existence, arises within the State of Colorado and is a vital issue before the Supreme Court of the United States—belying the Justice Department's cryptic denial of Indian interests.

[XLIV] Equally important to this consideration is this authoritative, long-standing statement:

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[54] Arizona v. California, 373 U.S. 546, 552 (1963).

[55] Federal Encroachment on Indian Water Rights and the Impairment of Reservation Development, 91st Congress, 1st Sesssion, * * * A Compendium of Papers * * * Joint Economic Committee * * * Vol. 2, p. 467.

[56] See Plate I and facing page.

[57] Upper Colorado River Commission, First Annual Report, March 20, 1950; p. 7–9—*Note:* Flows of the main stream of the Colorado River and its tributaries are set forth in that report. That digest of flows at the Colorado State line is most instructive in regard to the San Juan River, White, Yampa and other rivers alluded to above, vital to the Navajo Indian Reservation, Uintah and Ouray and others. For other analysis of the flows and sources of water for the Colorado River, see *Arizona* v. *California,* Special Master's Report December 5, 1960, VII. Mainstream Supply pages 99 et seq.; 109 et seq.; C. Tables p. 115 et seq.

For more current confirmation data, see Water Resources of the Upper Colorado River Basin, Basic Data—U.S. Department of the Interior, Geological Survey Professional Paper 442—Text and Plates.

> "Ninety-one percent of the water of the entire watershed has its origin in the mountains of Colorado, Wyoming, and Utah and not more than six percent comes from Nevada, Arizona, and California. * * * [58]

Vital to the Colorado River main stream American Indians with rights decreed to them by the Supreme Court is this statement:

> "Ninety-four percent, therefore, of the water that passes Yuma originates above the Arizona-Utah line. * * * Nearly one thousand miles of canyon separate the lands upon which water may be beneficially applied in the upper basin from the lands upon which water may be beneficially used in the lower basin"—the five American Indian Reservations to which rights have been decreed are encompassed in that statement.

By reference to Plate I the States in the Upper Basin and the Lower Basin may be determined. Lee Ferry, point of division between the Basin's segments, is set forth on that Plate, being located immediately south of the common boundary between Utah and Arizona.

(*g*) *Environmental crisis envelops Colorado River Basin—American Indians are first victims of it*

An environmental crisis—largely contrived by man—envelops the Colorado River Basin today. Undoubtedly the Highest Court will [XLV] take judicial cognizance of that ecological debacle. It is a National disaster. There are two primary aspects of it, (1) A water shortage, as related to demands; (2) Pollution of the Colorado River water, likewise markedly attributable to Federal reclamation projects or Federally subsidized projects. Reference will be made to the water shortage within the Colorado River Basin.

(1) *Acute water shortage in Colorado River Basin—a National disaster.*—Catastrophic conditions prevail in the Colorado River Basin due to projects having been constructed far beyond the available supply of water. American Indians within the Basin are probably the first victims of this mindless irresponsibility. Unquestionably judicial cognizance of this induced ecological debacle will be taken by the Highest Court. That crisis on the Colorado underscores the frivolous approach taken by the Justice Department in response to the urgent requests of the Indians, all as has been reviewed above.[59]

In regard to the imperative need for the Supreme Court to take judicial notice of the environmental crisis is recent Congressional [60] and Executive action taken in regard to it.[61] Reports in regard to the Colorado River Basin Project Act, having discussed further investigations respecting the crisis on the Colorado River, now implicitly before the [XLVI] Supreme Court, say this, among other things: "* * * the Secretary [of the Interior] can then proceed with investigations to determine the most economical means of augmenting the water supply of the Colorado River in order to serve the most critical water-short area of our Nation." [62] That quoted excerpt from a Congressional report, in blandest terms, describes most critical prevailing conditions throughout the Colorado River Basin. Other Congressional comments are more explicit respecting the planned destruction of the Colorado River and its implications for the politically weak American Indians in the Colorado River Basin:

> "2. All of the studies indicate the presence of a serious water deficiency in the lower basin of the Colorado River; in fact, they show that a real crisis is being faced by Arizona, southern California, and Nevada. Furthermore, this same crisis is coming closer and closer to the upper basin with each passing year; therefore, the fundamental issue facing the Congress involves the question of the water supply deficiency of the entire Colorado River Basin." [63]

There is nothing new in the recognition that the yield of the Colorado River was far short of the planned demands being placed upon it by Federal projects. These bleak statistics of the [XLVII] long-existing, now accentuating, catastrophic effects of over-building of the Colorado River are reflective of that fact:

> "Over the years since the gages were installed at Lee Ferry in 1922 [pursuant to the Colorado River Compact], about 45 years ago, the 'virgin flow' at Lee

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[58] The Hoover Dam Documents, Wilbur and Ely, 1948, p. A64.

[59] See *Supra*, pages 2 et seq.

[60] Colorado River Basin Project Act, P.L. 90–537, Act of September 30, 1968, Sec. 201.

[61] See Western U.S. Water Plan, Federal-State Meeting, Denver, Colorado, September 30–October 1, 1970; and Western U.S. Water Plan, Plan of Study, draft for review February 5, 1971.

[62] Western U.S. Water Plan, Plan of Study, Draft for Review, February 5, 1971 P. II–3.

[63] House Report 1849, 89th Congress, 2d Session, "The Committee's Conclusions on Water Supply", page 34.

> Ferry, if there had been no depletions at all in the Upper Basin, would have averaged only 13.8 million acre feet annually. There is no dispute about this figure."[64]

That figure must be contrasted with the total apportionment between the Upper and Lower Basins of 16,000,000 acre-feet annually.[65]

"The Colorado is the world's most overworked river. So completely does man control this stream that it leaves the U.S. here at Yuma [California] as little more than a trickle. [See Plate I]

* * * * * * *

"Use and reuse of the Colorado's waters as it flows to the sea have pushed its salt content above federal standards for drinking. Salt also is damaging crops grown on land irrigated by the Colorado in California and Arizona." [66]

To meet the crisis it is suggested that the appropriate course to pursue is to "'lay another river down' in the Colorado Basin * * *." [67] Congress, reflecting the concern of the Columbia River Basin contingent, **[XLVII]** made short shrift of laying down another river, using the Columbia River water, in the Colorado Basin in the foreseeable future.[68] Acute nature of the water shortage in the Colorado River Basin is the immediate cause of pollution of the Colorado River.

(2) *Pollution of the Colorado River—an immediate irreparable loss to American Indians.*—Pollution of the Colorado River due to high salinity is an immediate irreparable damage to the American Indian Reservations, particularly those Reservations with rights decreed to them in the main stream of the Colorado River by the Supreme Court.[69] Most recently it has been officially reported that salinity in that reach of the Colorado River constitutes a "Severe Problem in Some Areas Or Major Problem in Many Areas." [70]

It is the highly regarded United States Geological Survey that firmly established the fact that the pollution crisis on the Colorado River stems from the construction of highly subsidized Colorado River Basin projects and those for transmountain diversions. In a 1969 publication entitled "Lower Colorado River Water Supply—Its Magnitude and Distribution", [71] it is stated: "The principal components of the man-caused depletion are (a) evaporation **[XLIX]** resulting from irrigation or other uses within the drainage basin, (b) diversions to areas outside the basin, and (c) evaporation from reservoirs." [72]

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[64] Report on Central Arizona Project, Minority and Individual views, 90th Congress, 1st Session, Senate Report No. 408, page 89.

[65] Colorado River Compact, Article III. The Hoover Dam Documents, Wilbur and Ely, 1948, A19 ; See also P. 25 for comments on allocation.

[66] U.S. News & World Report, March 31, 1969.

[67] Id. at p. 86.

[68] "* * * for a period of ten years from the date of this Act, the Secretary shall not undertake reconnaisance studies of any plan for the importation of water into the Colorado River Basin * * *." P.L. 90–537 Act of September 30, 1968, Sec. 201.

[69] See Plate I.

[70] Western U.S. Water Plan, W. Don Maughan, Water Resources Council Item 3, attachment.

[71] Geological Survey Professional Paper 486–D, page D 12.

[72] Evapotranspiration has been defined in regard to irrigation as follows: "Much irrigation water is lost by evaporation from soil and water and water surfaces or is transpired by plants. These processes in combination are called consumptive use or evapotranspiration." (Encyclopedia of Science and Technology, McGraw-Hill, vol. 7, page 270.) It is stated that the irrigated acreage within the Colorado River valley increased from 1,020,000 in 1910 to 1,425,000 acres in 1960. Immediate result of plant use of water has been described as follows: "Irrigation invariably results in concentration of dissolved mineral matter, or salts, in the return water, because the plants consume a large part of the water applied but only a small part of the salts. Also, mineral fertilizers and soil minerals are carried off in solution in the return water." (Arizona Water, Geological Survey Water Supply Paper No. 1648, 1966, page 12.)

In discussing another "man-caused depletion" of the Colorado River the Geological Survey states: "Water exports [from the Colorado River Basin] increased from relatively insignificant amounts prior to 1905 to more than 500,000 acre-feet in 1960." (Lower Colorado River Water Supply—Its Magnitude and Distribution, Geological Survey Professional Paper 486–D.)

In "MAN . . . an endangered species?" (United States Department of the Interior Conservation Year Book No. 4, page 57) those depletions from the Colorado valley are euphoniously described as "Taking Water Through Mountains." Those takings occur in the upper reaches of the Colorado River and its tributaries which constitute the prime source of the water so essential to the continued existence of the Indian Reservations in that basin—indeed to all other users of Colorado River water.

Also taken from "MAN . . . an endangered species?" are references to the Bureau of Reclamation's Fryingpan-Arkansas Project "to divert Colorado River water into the Arkansas River drainage * * *"; and to the "San Juan-Chama Project, to divert Colorado water for irrigation in the Rio Grande River Basin and for municipal supplied for Albuquerque."

Final "man-caused" depletion of the Colorado River, as stated above, is evaporation losses from the numerous reservoirs constructed in that river. It is reported that from Lake Mead—created by Hoover Dam—alone the evaporation loss "was about 90 inches

[L] As a shadow follows the substance, "man-caused" depletions have resulted in the quality of the Colorado River deteriorating beyond the point of grave danger.[73] Keeping in the foreground the fact, as reviewed below, that 500 parts per million of solids has been established as the minimal quality for drinking water by the Public Health Service, a review of the progressive pollution that exists in the Colorado River is most alarming. Studies by the United States Geological Survey reveal that at Lee Ferry where the Colorado River enters the Lower Basin, the weighted average of salts was found [LI] in the year 1967 to be 601 parts per million.[74] Proceeding downstream, near Grand Canyon, Arizona, the water quality disclosed an increase in salts, weighted average 663 parts per million.[75] Pollutants flow into the Colorado River from all sides. Salts in the Virgin River, a main stream stributary, when tested had a weighted average of 1780 parts per million.[76]

At each point of measurement on the main stem of the Colorado River the pattern of increase contamination continues. Immediately above the Fort Mojave Indian Reservation in Arizona and California the salts in the river range up to 700 parts per million; at the Colorado River Indian Reservation below Parker, Arizona, they are well above 700.

Finally, at the Yuma Indian Reservation, a lateral from the gargantuan All-American Canal which supplies the Imperial Valley with irrigation water, the weighted average of salts was 848 parts per million at the time of the testing.[77]

Those statistics are not new nor prosaic to California. For the waters of the Colorado River underlie the vast economy of Southern California. Destroy the supply of Colorado River water and the destruction of that immense economy necessarily follows. On September 18, 1969, under this headline "Rising Salinity of Colorado River Called Ominous" a debacle—albeit "man-caused"—is described.[78] It is then followed [LII] by this statement, truly ominous: "Entire Crops May Be Phased Out in 2 Areas, Water Control Unit Told." Following those statements State and Federal officials reviewed in lay terms a grave threat to one of the world's great sources of food supply. At Imperial Dam—headworks for the All-American Canal referred to above, it is stated: "* * * the river's salinity, now standing at an average of 850 parts of dissolved solids per million parts of Water at Imperial Dam, would rise to 1,300 parts per million shortly after the year 2,000." The report continues, "* * * the evaporation of large quantities of pure water from the surfaces of the lakes created behind the dams built on the river" is one of the primary reasons for the sharp increase in salts and the precipitous decline in water quality. What the California official did not add is that the Colorado River Basin Project contemplates numerous additional dams throughout the Colorado River Basin and that the Central Arizona Project as now planned, together with now abuilding transmountain diversions, will further deplete that stream.

In concluding, the Federal officials declared: "* * * by 2,010, dissolved solids would rise to 1,223 parts per million at Imperial Dam and 990 parts per million

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per year from this reservoir surface. The volume of water evaporated was about 800,000 acre-feet. (Arizona Water, Geological Survey Water Supply Paper No. 1648, 1966, page 5.) Continuing in regard to this type of loss, the last cited authority declares, "Evaporation from other reservoirs on the Colorado River, from the channel of the river itself, and other reservoirs within Arizona, amounts to more than 500,000 acre-feet per year."

In addition to the great evaporation loss from Lake Mead it has been estimated—very roughly—that in the Upper Basin of the Colorado River there will be reservoir losses between 600,000 and 700,000 acre-feet annually. (Report on Central Arizona Project, Minority and Individual views, 90th Cong. 1st Sess. Senate Report No. 408, page 89. See also earlier report on Lower Colorado River Basin Project, hearing before the Subcommittee on Irrigation and Reclamation of the Committee on Interior and Insular Affairs, House of Representatives, 89th Congress, 1st Session, on H.R. 4671 and similar bills, page 557.) Thus, conservatively calculated, the evaporation losses from the reservoirs on the Colorado River total roughly 2,000,000 acre-feet annually.

[73] In the year 1962 the United States Department of Health, Education and Welfare established standards for potable water. Among other things that Federal agency declared: "Drinking water shall not contain impurities in concentrations which may be hazardous to the health of the consumer." Straight-faced, it adds that drinking water "shall not be excessively corrosive to the water system." Criteria were then established in these terms: "The following chemical substances should not be present in a water supply in excess of the listed concentrations * * *

"Total dissolved solids [salts] * * * 500" parts per million. (Public Health Service Drinking Water Standards 1962, page 7. *Note.* "The dissolved minerals in water commonly are called salts. This term is used in a chemical sense, however; it does not imply that all these minerals are salts in the ordinary sense, such as table salt (sodium chloride).")

[74] Water Resources Data For Arizona, Part 2, Water Quality Records, page 14.

[75] Id., page 32.

[76] Id., page 40.

[77] Id., page 83.

[78] Los Angeles Times, September 18, 1969.

at Hoover Dam further upriver. The respective figures in 1960 were 759 and 697" parts per million.

This grave indictment in regard to man-made pollution in the Colorado River can be made on behalf of the Fort Mojave, Chemehuevi, Colorado River Indian Tribes, Cocopahs and the Quechans of Fort Yuma—Trustee, United States of America has subsidized Federal reclamation projects so far in excess of the available supply of water that [LIII] each of the Reservations is confronted with an ecological disaster from stream pollution. That disaster is accentuated not only by existing projects but those that are authorized and soon to be undertaken. Reference in that regard is made to the Central Arizona Project, final coup administered by the Federal agencies to the American Indians in the Colorado River valley on the Reservations to which the Supreme Court has decreed rights in the main stream of the Colorado River.

(*h*) *Central Arizona Project being constructed in disregard of water shortage, pollution—final coup to the American Indians in the Colorado River Basin*

As now contemplated the Central Arizona Federal Reclamation Project will pump water from the over-sold, over-appropriated, and polluted Colorado River approximately 1,200,000 acre-feet of water annually. Water for the project is not available—a well known and proved fact. Plans presently contemplate that the Colorado River water which will be taken, if the project is built, will be pumped from the Bill Williams River arm of Lake Havasu, immediately above Parker Dam, downstream from the Fort Mojave Indian Reservation and the Chemehuevi Indian Reservation, but above the Colorado River, Cocopah and the Yuma Indian Reservations.[79] Point of diversion from the Colorado River in its present polluted and diminished flow condition is of no consequence from the standpoint of the American Indians to be destroyed by it. Commit water from a stream to a non-Indian development and the pattern for seizure of Indian water in disregard of Indian prior and paramount rights is an accomplished fact—albeit illegal and wholly immoral.

[LIV] Recently this stark statement in regard to the planned environmental disaster on the Colorado River, was re-published:

> "While there is disagreement with respect to time, the cold fact remains that eventually the water supply for the central Arizona project from mainstream Colorado River water will be reduced to less than 300,000 acre feet annually unless augmentation becomes a reality." [80]

Succinctly stated, the quoted excerpt sets forth the shocking fact, a project costing in excess of a billion dollars is in the process of being constructed. It is designed for 1,200,000 acre-feet of water annually and as the quoted statement declares, "the cold fact remains * * *" that the Central Arizona Project has a deficit of 900,000 acre-feet of water annually below its planned and constructed capacity.

Exactly when that 900,000 acre-feet annual deficit will take place is not known. What is known is this fact:

> "In the absence of imported water, the average divertible supply of water for the central Arizona unit is estimated to be 900,000 acre-feet by the year 2000." [81]

First victims of the catastrophe on the Colorado River will be the American Indians. Important in regard to the seizure of the Indian rights to the use of water decreed by the Supreme Court and those [LV] which have not been decrees, is the concerted well-planned attack upon the *Winters Doctrine* pursuant to which their prior and paramount rights have been guaranteed. That attack upon the Indian legal rights to water is the next phase of this consideration.

LEGAL PRINCIPLES RESPECTING AMERICAN INDIAN RIGHTS TO THE USE OF WATER IN GENERAL, AND THOSE INDIAN RIGHTS IN THE MAIN STREAM AND TRIBUTARIES OF THE COLOARDO RIVER WITHIN THE STATE OF COLORADO

(*a*) *American Indian Winters Doctrine rights to the use of water* [*erroneously included by the Justice Department in its definition to the Supreme Court of "reserved rights of the United States"*]

(*1*) *Interests in real property;*

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[79] Pacific Southwest Water Plan, Supplemental Information Report on Central Arizona Project, Arizona, pp. 27 et seq.

[80] Western U.S. Water Plan, Plan For Study, Draft for Review, February 5, 1971, page II–4.

[81] House Report 1849, 89th Congress, 2d Sess., "The Committee's Conclusions on Water Supply", page 34.

(2) *Immemorial rights;*
(3) *Invested rights*

A statement of the pertinent facts as they relate to the waters of the main stream of the Colorado River and the tributaries of that stream within the State of Colorado, has been completed. Likewise reviewed has been the shortage of water in the Colorado River Basin; the grave pollution problem in that Basin; the tradegy of the Central Arizona Project.

In the paragraphs which follow there will be reviewed the legal predicates upon which American Indians have title to their rights to the use of water.

(1) *American Indian rights to the use of water are interests in real property of the highest dignity with all the attendant benefits flowing from that principle accruing to them.*—It is elemental that rights to the use of water are interests **[LVI]** in real property.[82] Equally elemental is the principle that rights to the use of water are usufructuary and do not relate to the corpus of the water.[83] Being part and parcel of the land itself the Indian rights to the use of water in the absence of facts establishing a contrary intention, pass with land when it is conveyed. Measure of the Indian rights which pass with the conveyance, assuming a requisite intent express or implied is shown, is, of course, dependent upon the facts of each transaction.[84]

Adjudication of American Indian rights to the use of water is accomplished through actions to quiet title. On the subject these statements have been made:

> "The suit [to protect the Yakima rights], like other proceedings designed to procure an adjudication of water rights, was in its purpose and effect one to quiet title to realty. Rickey Land & Cattle Co. v. Miller & Lux, 9 cir., 152 F. 11, 15, affirmed 218 U.S. 258." [85]

Continuing, the court stated:

> "Furthermore, as in the case of other suits to quiet title, the defendants should have been required to appear by answer and set forth their claims of right to the use of the waters of the stream. Reynolds v. Schmidt, 10 cir., 40 F. 2d 238, 240." [86]

[LVII] Colorado's Supreme Court and other authorities on the subject reiterate the basic concepts of law respecting the nature of rights to the use of water and the remedies adopted in regard to the protection of those rights, in these terms:

> "It is manifest from a careful examination of our statutes and from the repeated decisions of our courts that our proceedings, not technically one to quiet title, is quite analogous thereto * * *." [87]

The same court described the proceedings as being *sui generis* in the nature of an action *in rem* with the right to the use of the water the subject matter of the decree.[88] Kinney has commented upon the subject in these terms:

> "In Colorado, where the award of the water is made by the Courts to ditches which are given certain numbers according to their respective priorities * * * such an action may be regarded as strictly one in rem * * *."[89]

It is observed in passing that:

> "In this state [Colorado] the right to the use of water for irrigation is deemed real estate, and is a distinct subject of grant, and may be transferred either with or without the land * * *." [90]

On that background consideration will be directed to other elements of the American Indian rights to the use of water and the concerted attack upon those Indian rights before the Supreme Court and elsewhere.

[LVIII] (2) *Immemorial Indian rights.*—Long established tenets of Anglo-Saxon jurisprudence in regard to interests in real property and the conveyancing of them, have been applied by the Supreme Court respecting immemorial rights, title to which resided in many American Indian Tribes antecedent to the European invasion of the North American Continent. Reference in that connection is made to the case of *United States* v. *Winans*.[91] In *Winans* there were Yakima Indian

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[82] Wiel, Water Rights in the Western States, 3d ed., vol. 1, sec. 18, pp. 20, 21; sec. 283, pp. 298–300; sec. 285, p. 301, United States v. Chandler-Dunbar Water Power Co., 229 U.S. 53, 73 (1913); Ashwander v. TVA, 297 U.S. 288, 330 (1936).

[83] Fuller v. Swan River Placer Mining Co., 12 Colo. 12, 17; 19 Pac. 836 (1898); Wright v. Best, 19 Cal.2d 368; 121 P.2d 702 (1942); Sowards v. Meagher, 37 Utah 212; 108 Pac. 1112 (1910); See also Lindsey v. McClure, 136 F.2d 65, 70 (CA10, 1943).

[84] United States v. Powers, 305 U.S. 527, 533 (1939).

[85] United States v. Ahtanum Irrigation District, 236 F.2d 321, 339 (CA9, 1956).

[86] Ibid.

[87] Crippen v. X Y Irr. Co., 32 Colo. 447, 76 Pac. 794 (1904).

[88] Louden v. Handy Ditch Co., 22 Colo. 102, 43 Pac. 535 (1897).

[89] Kinney on Irrigation and Water Rights, page 2844, sec. 1569.

[90] David v. Randall, 44 Colo. 488; 99 Pac. 322 (1908).

[91] 198 U.S. 371 (1904).

Nation rights of fishery in the Columbia River reserved by the Indians in their Treaty of 1855 with the United States which were the subject of attack.[92] It is, of course, elemental that the right of fishery is an interest in real property.[93] Applying to that Treaty the basic precepts of the law of real property, the Highest Court had this to say: "The right to resort to the fishing places in controversy was a part of larger rights possessed by the Indians * * *

> the treaty was not a grant of rights to the Indians, but a grant of rights from them—a reservation of those not granted." [94]

In declaring the Treaty between the Yakimas and this Nation immune from control or vitiation by a license to fish issued by the State of Washington, the Supreme Court had this to say:

> [LIX] "* * * the [Treaty] right was intended to be continuing against the United States and its grantees as well as against the State [of Washington] and its grantees." [95]

Rejecting the contention that in some manner a Treaty could be violated by the issuance of a patent omitting reference to it, the Court ruled:

> "* * * The Land Department could grant no exemptions from its provisions. It makes no difference, therefore, that the patents issued by the Department are absolute in form. They are subject to the treaty as to other laws of the land." [96]

Sound and explicit principles of Constitutional law based upon the supreme law of the land and equally fundamental principles of real property law, are the basis of the *Winans Decision.* Those concepts, as will be reviewed, are equally applicable to the prior, paramount and immemorial rights to the use of water of the American Indian Tribes who entered into Treaties or agreements with the Nation establishing their Reservations.

Reiteration of the legal concepts of the *Winans Decision* enunciated by the Supreme Court came about very soon by the Court in the Winters Decision.[97] respecting the Fort Belknap Indian rights to the use of water in the Milk River in Montana. There are striking factual and legal parallels between *Winans* and *Winters.* Both involved Indian Tribes in the status of grantors to the grantee United States, Trustee. Involved in both is the immunity of covenants between the Indians and the Nation from the admission of States into the Union, [LX] or State law, Crux of the *Winans* and *Winters Decisions* entailed interpretations of documents pursuant to which the Indians granted away vast areas—retaining nevertheless their immemorial title to interests in real property, immune from State law, to all that they did not grant.

Few cases have simpler facts, law and logic contained in them than does *Winters.* There are two salient issues: The meaning of an agreement between the Indians, grantor, and the Federal Government, grantee, as it relates to rights to the use of water; the effect of the admission of the State of Montana into the Union upon that agreement as it pertains to those rights. In the words of the Court regarding *Winters:* "The case, as we view it, turns on the agreement of May, 1888, resulting in the creation of Fort Belknap Reservation. In the construction of this agreement there are certain elements to be considered that are prominent and significant." [98]

History of the relationship between the Indian Tribes and the National Government antecedent to the May 1888 agreement, as recited below, is important for it reflects the series of cessions of vast areas of land by the Indians, the last of which was the May 1888 agreement upon which, as the Supreme Court states, the *Winters Decision* "turns." [99]

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[92] Id. at 377–378 (1904).

[93] In support see "Federal Encroachment on Indian Water Rights and the Impairment of Reservation Development," 91st Cong., 1st Sess., * * * A Compendium of Papers * * * Joint Economic Committee * * * pp. 460–471 et seq.

[94] U.S. v. Winans, 198 U.S. 371, 381 (1904).

[95] U.S. v. Winans, 198 U.S. 371, 381 (1904).

[96] Id., at 382.

[97] Winters v. United States, 207 U.S. 564 (1908).

[98] Winters v. United States, 207 U.S. 564, 575–576 (1908).

[99] The facts of the *Winters Decision* in which the doctrine was enunciated, are of great importance for they go far in establishing the Federal-State-Indian relationship. Those facts are reviewed in some detail in the opinions of the Court of Appeals for the Ninth Circuit which were affirmed by the Supreme Court. (Winters v. United States, 143 Fed. 740, 741 (CA9, 1906); Winters v. United States, 148 Fed. 684 (CA9, 1906)). Involved were the rights to the use of water in the Milk River as they related to the Fort Belknap Indian Reservation in the State of Montana.

Respecting the background of those claimed rights to the use of water the Court of Appeals reviewed these salient facts:

> "* * * By the provisions of article 4 of the treaty of October 17, 1855, proclaimed April 25, 1856, [Treaty with the Blackfeet, 1855, 11 Stat. 657] there was established and reserved to the Ft. Belknap Indians, and other Indian tribes, as and for their home and abiding place, nearly all that part of the state lying north of the Mussel

[LXI] As the resumé of history discloses, and in the words of the Court, "The reservation was a part of a very much larger tract which [LXII] the Indians had the right to occupy and use * * *" which was adequate for "a nomadic and uncivilized people." Continuing, the Court pointed out that the Nation and the Indians desired for the Indians "to change those habits and to become a pastoral and civilized people." The Indians under the agreement of May 1888, as the Court recognized, were to occupy a much reduced area which it described as follows: "The lands were arid and, without irrigation, were practically valueless." It was on that background of the May 1888 agreement between the Indians and this Nation that the Court established the criteria pursuant to which that agreement would be interpreted. It is important to observe this crucial sentence from the decision:

"The Government is asserting the rights of the Indians." [100]

Those rights to the use of water, as the Supreme Court states, were reserved by the Indians when they granted other properties to the National Government under the 1888 agreement. In regard to "the rights of the Indians" without which the lands they retained under the agreement are "practically valueless", the Court continued its analysis: [LXIII] "And yet, it is contended, the means of irrigation were deliberately *given up by the Indians* and *deliberately accepted by the Government*", reaffirming in that quoted statement the Indian-grantor, the Nation-grantee, situation respecting the agreement of 1888. (Emphasis supplied)

Proceeding to reject the "further contention" that the Indians, knowing that the lands without water were "practically valueless" nevertheless granted away their rights, said: "The Indians had command of the lands and the waters—command of all their beneficial use, whether kept for hunting, 'and grazing roving herds of stock,' or turned to agriculture and the arts of civilization." The Court then asked these crucial questions: "Did they give up all this? Did they reduce the area of their occupation and give up the waters which made it valuable or adequate?"[101] Responding to its rhetorical questions, the Court stated: "If it were possible to believe affirmative answers, we might also believe that the Indians were awed by the power of the Government or deceived by its negotiators." In declaring that the Fort Belknap Indians retained—did not convey—their immemorial rights to the use of water in the Milk River, the Supreme Court emphasized:

> "The Government is asserting the rights of the Indians", not those of the United States.

Shell river, and extending from the crest of the main range of the Rocky Mountains eastward, approximately to what is now the western boundary line of the Ft. Peck Indian reservation. * * * By the terms and provisions of this treaty the Ft. Belknap Indians reserved to themselves the 'uninterrupted privileges of hunting, fishing, and gathering fruit, grazing animals, curing meat, and dressing robes,' Article 3, of Treaty, 11 Stat. 657. The territory which was so set apart and reserved to them at that time embraced the channel and the waters of Milk river from its source to its mouth lying within the confines of the United States. This continued to be the abode of these Indians until 1874, [18 Stat. 28, Ch. 96—An act to establish a reservation for certain Indians in the Territory of Montana.] at which time their territory was reduced so as to embrace nearly all that part of Montana lying to the north of the Missouri river, and extending from the Rocky Mountains eastward to the Dakota boundary line including Milk river. * * *. The tract so set apart remained Indian country and the Indian reservation of these Indians until 1888, at which time the present Ft. Belknap Indian reservation was carved out of the larger reserve established in 1874 as their 'permanent home,' with the center of Milk river as the northern boundary line of the reservation, and which is now its northern boundary line." (25 Stat. 113, 114, Act of May 1, 1888, Ch. 213—An act to ratify and confirm an agreement with the Gros Ventre, Piegan, Blood, Blackfeet, and River Crow Indians, in Montana and for other purposes.)

In upholding the rights of the Indians the Court of Appeals in its first opinion declared:

> "In conclusion, we are of opinion that the court below did not err in holding that, 'when the Indians made the treaty granting rights to the United States, they reserved the right to use the waters of Milk river' at least to the extent reasonably necessary to irrigate their lands. The right so reserved continues to exist against the United States and its grantees, as well as against the state and its grantees." (Winters v. United States, 143 Fed. 740, 749 (CA9, 1906)).

Of interest is the fact that the language used by the trial court and affirmed by the Court of Appeals for the Ninth Circuit, is very similar to that used by the Supreme Court in the *Winans Decision* although that authority is not cited.

In the opinion affirming the final injunctive decree against *Winters* the Court of Appeals further stated:

> "* * * by the express terms of that treaty there was reserved to the Indians the waters of Milk river as a part and parcel of the reservation set apart to them." (148 Fed. 684, 686 (CAD9, 1906)).

[100] Winters v. United States, 207 U.S. 564, 576 (1908).

[101] Winters v. United States, 207 U.S. 564, 576 (1908).

Having thus declared that the Indians had retained their rights in the Milk River under their 1888 agreement—had not conveyed them to the United States—the Supreme Court presented the second phase of its opinion pertaining to the claims that the admission of Montana into the Union and the laws of that State in some manner denigrated [LXIV] the Indian title to the rights thus retained. From that pinion this excerpt is taken:

> "Another contention of appellants is that if it be conceded that there was a reservation of the waters of Milk River by the agreement of 1888, yet the reservation was repealed by the admission of Montana into the Union, February 22, 1889, c. 180, 25 Stat. 676 'upon an equal footing with the original States.'"[102]

In rejecting that contention the Supreme Court again alluded to the May 1888 agreement, denying tht the admission of Montana "repealed" that agreement.

It pointed out that Winters had to rely upon the same argument that the Indians did not retain rights to the use of water in the Milk River to sustain the second erroneous "contention."

Having declared that the Indians by the May 1888 agreement retained their rights to the use of water, the Court said in regard to the relationship between Montana and the Nation—not the Nation and the Indians—that:

> "The power of the Government [in its political relationship with Montana] to reserve the waters and exempt them from appropriation under the state laws is not denied, and could not be. The United States v. The Rio Grande Ditch & Irrigation Co., 174 U.S. 690, 702; United States v. Winans, 198 U.S. 371. That the Government did reserve them we have decided, and for a use which would be necessarily continued through years."[103]

Reemphasizing the fact that the Indians retained their rights to the use of water, the Court reiterated its conclusion in these terms: "* * * it would be extreme to believe that within a year [after the agreement of May 1888] *Congress* destroyed the reservation and *took from the Indians the consideration of their grant*, * * *" of a vast [LXV] land area to the United States, leaving the Indians without their rights to the use of water "a barren waste."

In another Supreme Court decision it applied the principles of the *Winans* and *Winters Decisions* in regard to the rights to the use of water retained by the Crow Indians pursuant to their Treaty of May 7, 1868, with the United States.[104] In applying the principles of the *Winters Decision* the Court, among other things, said this: "That the Treaty contains no definite provision concerning apportionment or use of waters." On that background the Court analyzed the issues there presented, specifically ruling "* * * that under the Treaty of 1868 waters within the Reservation were reserved for the equal benefit of tribal members (*Winters* v. *United States*, 207 U.S. 564) * * *."[105] In the *Powers Decision* the Court recognized that the rights to the use of water were part and parcel of the land and passed with the transfer by an Indian of his allotment. It declared nevertheless "* * * we do not consider the extent or precise nature of respondents' rights in the waters."[106]

Indian immemorial rights, their immunity from State laws, control, adjudication, were the subject of a recent decision.[107] There, as in *Winans*, the State of Washington sought, without success, to have [LXVI] its laws in regard to rights to the use of water in some manner override the Yakima Indian Nation Treaty of 1855 with the United States. Relative to *Winters* the court said this: "That the Treaty of 1855 reserved rights in and to the waters of this stream for the Indians, is plain from the decision in Winters v. United States, 207 U.S. 564."[108]

In declaring that the Yakimas retained—did not convey—those immemorial rights to the use of water, title to which was vested in them except as to those specifically granted—the court made the following ruling predicated upon an unbroken line of authority: "As in the Winters case, we must answer in the negative the questions there posed: 'Did they [the Indians] give up all this? Did they [the Indians] reduce the area of their occupation and give up the waters which made it valuable or adequate?'"[109]

Continuing in regard to *Winters*, the court stated: "As was said in the Winters case, (207 U.S. 564, 576): 'The reservation was a part of a very much larger tract which the Indians had the right to occupy and use and which was adequate for the habits and wants of a nomadic and uncivilized people.' "[110] Applying the concepts of the *Winans Decision* the court concluded: "When the [Yakima] Indians agreed to change their nomadic habits and to become a pastoral and civilized people, using the smaller reservation area, it must be borne in mind, as the Supreme Court said of this very [Yakima] treaty, that **[LXVII]** 'the treaty was not a grant of rights to the Indians, but a grant of rights from them—a reservation of those not granted.' United States v. Winans, 198 U.S. 371, 381." [111]

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[102] Winters v. United States, 207 U.S. 564, 577 (1908).

[103] Ibid.

[104] United States v. Powers, et al., 305 U.S. 527, 532 (1939).

[105] Ibid.

[106] Id., at 533.

[107] United States v. Ahtanum Irrigation District, 236 F.2d 321 (CA9, 1956); Appellees' cert. denied 352 U.S. 988 (1956); 330 F.2d 897 (1965); 338 F.2d 307; Cert. denied 381 U.S. 924 (1965). For decree in case see 330 F.2d 915.

[108] United States v. Ahtanum Irrigation District, 236 F.2d 321, 325 (CA9, 1956).

[109] Id. at 326.

Rights retained under the Treaty relative to the source of water involved, the court said this respecting the Indian immemorial rights: "Before the treaty the Indians had the right to the use not only of Ahtanum Creek but of all other streams in a vast area." [112]

Retention of those immemorial rights was adjudicated in these terms: "The Indians did not surrender any part of their right to the use of Ahtanum Creek regardless of whether the Creek became the boundary or whether it flowed entirely within the reservation." [113]

Rejecting the contentions pressed by the State of Washington relative to its jurisdiction over the rights to the use of water retained by the Yakimas under their Treaty, the court dismissed them in these terms:

> "It is too clear to require exposition that the state water right decree could have no effect upon the rights of the United States. Rights reserved by treaties such as this are not subject to appropriation under state law, nor has the state power to dispose of them. Federal Power Comm'n v. Oregon, 349 U.S. 435, 444." [114]

Underscoring the immunity of the Yakima rights from the control or acquisition pursuant to the laws of the State of Washington, this succinct statement was made respecting the Indian prior and paramount rights:

> **[LXVIII]** "No portion of that volume of water or the right to the use thereof, was open to appropriation or other acquisition under state law by the defendants or their predecessors in interest. United States v. McIntyre, 9 cir., 101 F. 2d 650, 653–4; cf. Federal Power Comm'n v. Oregon, 349 U.S. 435." [115]

In keeping with the basic precepts of law, the Indian *Winters Doctrine* rights to theuse of water retained by them—not granted to the United States—are sufficient to meet the present and future reasonable water requirements for their Reservations. [116] On repeated occasions the principle has been sustained of immemorial ownership by the American Indians of their rights to the use of water retained by them when they ceded away to the National Government vast areas of their land. [117]

(*i*) *Principles of Western and Indian law respecting interpretations of conveyances applied by Supreme Court in Winters*

In *Winters* the Supreme Court in these succinct terms stated the key issue before it:

> "The case, as we view it, turns on the agreement of May, 1888, resulting in the creation of Fort Belknap Reservation. In the construction of this agreement there are certain elements to be considered that are prominent and significant."

It then declared that the Indians intended to retain rights to the use of water for their Reservation for it would be uninhabitable without water. [118]

[LXIX] In thus construing the document upon which the Supreme Court specifically adjudged its opinion turns, it applied a long-standing precept of law in Western United States respecting rights to the use of water.[119] It declared in keeping with that Western law, that the Indians intended to retain rights to the use of water and the United States did not intend to have those rights granted to it.[120]

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[110] Ibid.

[111] United States v. Ahtanum Irrigation District, 236 F.2d 321, 326 (CA9, 1956).

[112] Id. at 326.

[113] Id. at 326.

[114] Id. at 328.

[115] United States v. Ahtanum Irrigation District, 236 F.2d 321, 326 (CA9, 1956).

[116] Conrad Investment Co. v. United States, 161 Fed. 829 (CA9, 1908).

[117] Skeem v. United States, 273 Fed. 92 (CA9, 1921) ; United States v. McIntire, 101 F.2d 650 (CA9, 1939). (In addition to Supreme Court decisions and others previously cited.

[118] Winters v. United States, 207 U.S. 564, 575–576 (1908).

[119] 1 Wiel, Water Rights in the Western States, 3d ed., Sec. 550, pp. 586, 587.

[120] See Colorado decisions adhering to the same principle of the intent to convey or not to convey rights, a matter of intention; Denver Joint Stock Land Bank v. Markham, 106 Colo. 509, 107 P.2d 313 (1940).

Another basic precept of the law respecting documents of grant from the Indians to the National Government was applied by the Supreme Court in *Winters* using these terms:

> "By a rule of interpretation of agreements and treaties with the Indians, ambiguities occurring will be resolved from the standpoint of the Indians. And the rule should certainly be applied to determine between two inferences, one of which would support the purpose of the agreement and the other impair or defeat it." [121]

Predicated upon those fundamental concepts of the law the Indians retained—did not grant their rights to the use of water to the National Government. *Winters, Powers, Conrad Investment Co., Ahtanum*—all of the cases reviewed above pertained to immemorial rights to the use of water retained by treaties—not granted away—by the Indians in those decisions.

In the paragraphs which follow the Indian rights were conveyed to them by the United States as part and parcel of the lands which constitute their Reservations.

[LXX] (3) *American Indian invested rights to the use of water.*—Cruel and mindless acts of agents of the United States who determined the life or death of the American Indians must be kept in the foreground in this phase of the consideration. The American Indians on the main stream of the Colorado River are prime examples of that cruel mindlessness. They were unjustly deprived of their immemorial rights to the use of water in the Colorado River, dating back to antiquity, upon which they relied.[122] Their rights were extinguished by Congressional enactments concerning which they had no knowledge. Those laws required claimants of title to prove their rights or lose them. Thus the Trustee succeeded to the Indian rights under its own laws—the laws that required the Trustee to protect and preserve those Indian rights.[123]

There is now pending before the Supreme Court in the alleged issues before it, whether the rights to the use of water subsequently invested in the Indians will be stripped from them by perhaps the last cruel and mindless act of agents of the Trustee.

In the *Walker River Decision* the Court of Appeals for the Ninth Circuit declared that a reservation created by an 1859 Executive Order was entitled to divert and use water to meet the Indian needs.[124] **[LXXI]** It was recognized in that opinion that the *Winters Decision* was based upon a Treaty pursuant to which the Indians retained for themselves their rights to the use of water. Quite aside from that very material difference in the source of title, it said this: "The power of the Government to reserve the waters to the Indians and thus exempt them from subsequent appropriation by others is beyond debate." [125]

Repeated reference has been made to the rights to the use of main stream water decreed by the Supreme Court to the Fort Mojave, Chemehuevi, Colorado River Indian Tribes, Cocopah and Fort Yuma Reservations. As stated, those Reservations are set forth on Plate I and the decreed rights tabulated on the facing page of that Plate. Those rights thus decreed to the Indians and their Reservations are invested rights—first taken from the Indians by the National Government and then restored to them. As in the *Walker River Decision* the Supreme Court recognized the power of the National Government to reserve land and rights to the use of water for the Indian Reservations. Having referred to "* * * the broad power of the United States to regulate navigable waters under the Commerce Clause and to regulate government lands under Art. IV § 3 of the Constitution", the Court said this:

> "We have no doubt about the power of the United States under these clauses to reserve water rights for its reservations and its property." [126]

[LXXII] Rejecting the contentions of the State of Arizona which sought throughout to limit the Indian rights, the Highest Court continued:

> "Arizona also argues that, in any event, water rights cannot be reserved by Executive Order. * * * In our view, these reservations, like those created directly by Congress, were not limited to land, but included waters as well. * * * We can give but short shrift at this late date to the argument that the reservations either of land or water are invalid because they were originally set apart by the Executive." [127]

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[121] Winters v. United States, 207 U.S. 564, 576 (1908).

[122] "Federal Encroachment on Indian Water Rights and the Impairment of Reservation Development," 91st Cong., 1st Sess., * * * A Compendium of Papers * * * Joint Economic Committee * * * pp. 478 et seq.

[123] Fort Majave Claim, 7 Indian Claims Commission, Docket 295, Findings of Fact.

[124] United States v. Walker River Irrigation District, 104 F.2d 334, 336 (CA9, 1939).

[125] United States v. Walker River Irrigation District, 104 F.2d 334, 336 (CA9, 1939).

[126] Arizona v. California, 373 U.S. 546, 598 (1963).

[127] Arizona v. California, 373 U.S. 546, 598 (1963).

That the United States did reserve rights to the use of water in the main stream of the Colorado River for the Indian Reservations has been adjudged and decreed by the Supreme Court; that the Supreme Court decreed those rights to the Indians is free from doubt.[128]

(4) *American Indian immemorial and invested rights to the use of water in the main stream of the Colorado River and its tributaries throughout the Basin of that stream extend to the reach of the Colorado River within the State of Colorado and into the tributaries of that stream within that State.*—Basic and fundamental tenets of Western law respecting rights to the use of water are here involved. No principle of that field of jurisprudence is more firmly established than that a right to use water must of necessity extend to and be enforceable to the very well-springs of the source in which the right exists. Colorado's Supreme Court at an early date in the relatively short history of Western water law reviewed the nature of the interest in its tributaries of a downstream owner of rights in the main stream and ruled: To say “* * * that [LXXIII] an appropriator from the main stream is subject to subsequent appropriators from its tributaries would be the overthrow of the entire doctrine” of prior appropriation.[129] Colorado's court in the same decision declared the obvious:

> “All large streams are dependent upon tributaries for a supply of water. To cut off the water from such tributaries would be to destroy the capacity of the stream, to the injury of those below.”

On the subject of the downstream owner of rights to the use of water relying upon all upstream sources, the Supreme Court of Utah reiterated the principles adhered by Colorado's court.[130]

Nature of the right to protect the source of water is well stated in these terms by the Colorado Supreme Court: “It is a well-established principle in this jurisdiction that all waters are part of [LXXIV] a natural water course, whether visible or not, constituting a part of the whole body of moving water.” [131]

The Supreme Court of Colorado, citing its earlier decisions, has summarized as follows: “* * * we have held that seepage and percolation belong to the river * * *.” [132]

In specifically declaring and adjudicating the Indian rights in tributaries far removed from their lands, the Court of Appeals for the Ninth Circuit said this:

> “The suggestion that much of the water of the Ahtanum Creek originates off the reservation is likewise of no significance. * * * it would be a novel rule of water to limit either the riparian proprietor or the appropriator to waters which originated upon his lands or within the area of appropriation. Most streams in this portion of the country originate in the mountains [especially true of the Colorado River] and far from the lands to which their waters ultimately become appurtenant.” [133]

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[128] See above page 22, footnote 53.

[129] Strickler v. Colorado Springs, 16 Colo. 61; 26 Pac. 313, 315 (1891).

[130] Richlands Irrigation Co. v. Westview Irrigation Co., 96 Utah 403; 80 P.2d 458, 465 (1938):

“The entire watershed to its uttermost confines, covering thousands of square miles, out to the crest of the divides which separate it from adjacent watersheds, is the generating source from which the water of a river comes or accumulates in its channel. Rains and snows falling on this entire vast area sink into the soil and find their way by surface or underground flow or percolation through the sloping strata down to the central channel. This entire sheet of water, or water table, constitutes the river and it never ceases to be such in its centripetal motion towards the channel. Any appropriator of water from the central channel is entitled to rely and depend upon all the sources which feed the main stream above his diversion point, clear back to the farthest limits of the watershed.”

Oregon's Supreme Court summarized the general proposition in this manner: “The rights of prior appropriators from a stream cannot be impaired by subsequent appropriations of water from its tributaries.” (Dry Gulch Ditch Co. v. Hutton, 170 Ore. 656; 133 P.2d 601, 611 (1943).

[131] City of Colorado Springs v. Bender, 148 Colo. 458; 366 P.2d 552, 555 (1961).

New Mexico's highest court, drawing on several authoritative sources, upheld the fundamental rights of a downstream user to exercise that right in all waters contributing to his source of supply, stating: “An appropriation when made follows the water to its original source, whether through surface or subterranean streams or through percolations.” (Templeton v. Pecos Valley Artesian Conservancy District, 65 N.M. 59; 332 P.2d 465, 470 (1958)). Quoting the Colorado law on the subject, the New Mexico court set forth this basic proposition: “* * * The law in Colorado governing the first classification above suggested, i.e., underground waters which, if not intercepted, will ultimately find their way to a natural stream, is well settled. It has been frequently held by our appellate courts, from a very early date down to the present time, that all underground waters which by flowage, seepage or percolation will eventually, if not intercepted, reach and become a part of some natural stream either on or beneath the surface, are governed and controlled by the terms of the constitution and statutes relative to appropriation, the same as the surface waters of such stream.” (Ibid.)

[132] Safranek v. Town of Limon, 123 Colo. 1330; 228 P.2d 975, (1951).

[133] United States v. Ahtanum Irrigation District, 236 F.2d 321, 325 (CA9, 1956).

[LXXV] Wiel has summarized the basic rights of downstream owners in the tributary water sources in these terms:

"* * * it is proper to look upon the stream [here the Colorado] as not merely consisting of the channel and flow at the point where the observer is standing, but as a composite body in which the upper branches and tributaries are an integral part." [134]

Error pervades every phase and facet of the *Eagle River Adjudication* and *Water Division No. 5 Adjudication* by reason of the failure of the Justice Department to bring to the attention of the Highest Court the Indian rights in the streams in question. In the present status of the law and the facts which exist, that Court has no jurisdiction and, as stated above, the cases should be dismissed forthwith.[135]

Reference is warranted to the law of the Colorado River which exempts Indian rights from its operation. It is provided in the Colorado River Compact that "Nothing in this compact shall be construed as affecting the obligations of the United States of America to Indian tribes." [136] In the Upper Basin Compact it is provided that:

"Nothing in this Compact shall be construed as:

> "(a) Affecting the obligations of the United States of America to Indian tribes;
>
> * * * * *
>
> "(c) Affecting any rights or powers of the United States of America, its agencies or instrumentalities, in or to the waters of the Upper Colorado River System, * * *." [137]

[LXXVI] Reference is also made to the scope of the decision in *Arizona* v. *California*.[138] That is a unique decision, markedly limited to documents and statutes which were before the Court. "* * * we have decided" said the Highest Court, "that Congress has provided its own method for allocating among the Lower Basin States the mainstream water to which they are entitled under the Compact." [139] The Court rejected the contention it could substitute its will for that of Congress and undertake its own "equitable apportionment." Adding an additional rejection, it states: "Nor does the Colorado River Compact control this case." Rather the Supreme Court emphasized that Congress exercised its Constitutional powers, to the exclusion of all else, in regard to the mainstream water in the Lower Basin.[140]

Succinctly it was adjudged that the prime issues in *Arizona* v. *California* related strictly to "The Congressional scheme of apportionment" relating to an annual 7,500,000 acre-feet in the main Colorado River. It stated in regard to the Lower Basin and then only under the Congressional Act in question, that "* * * the tributaries are not included in the waters [7,500,000 acre-feet annually] to be divided but remain for the exclusive use of each State." [141]

In error—and going far beyond the limited scope of *Arizona* v. *California*—the Respondents say this, purporting to support their [LXXVII] position that Congress subjected all of the rights of the United States to State police regulations:

"* * *The Master found it inappropriate to adjudge matters of interstate rights and priorities on the tributaries (Master's Report 332–334) and this Court noted that under §18 of the Project Act 'regulation of the use of tributary water' was left to the states (Id. 588)." [142]

That quoted excerpt was limited to the issues before the Supreme Court in regard to Arizona, California and Nevada. The State of Colorado was not a party to *Arizona* v. *California*. None of the issues involving the Boulder Canyon Project Act as amended and supplemented, has relationship with the alleged issues presented to the Supreme Court in the two adjudications, the subject of this consideration. Hence, as stated, Respondents commit grave error when they endeavor to make applicable against the Indian rights in the Colorado River and its tributaries within the State of Colorado the purported authorities upon which they rely in their attacks upon the Indian *Winters Doctrine* rights to the use of water.

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[134] 1 Wiel, Water Rights In The Western States, 3d ed., Sec. 337, p. 358.

[135] See above, pages 2 et seq.

[136] Hoover Dam Documents, Wilbur & Ely, 1948, p. 28, Art. VII.

[137] Hoover Dam Documents, Wilbur & Ely, 1948, p. A181, Art. XIX.

[138] 373 U.S. 546 (1963).

[139] Id. at 565.

[140] Id. at 566.

[141] Id. at 567.

[142] See Respondents' Brief, Appendix, p. 24; Appendix, p. 27, footnote 53.

(5) *Good water quality is a property characteristic of American Indian rights to the use of water in the Colorado River—it has been violated.*—There has been reviewed above the "*Pollution of the Colorado River—an immediate irreparable loss to the American Indians.*" It is a basic precept of the law that the owner of rights to the use of water is protected against the deterioration in water quality. Indeed, as the authorities set forth below disclose, the right to preserve the quality of water is commensurate with the right to a quantity of water. [LXXVIII] Manifestly that property characteristic of the rights to the use of water of the American Indians in the Colorado River has been violated.[143]

(6) *Interior Department's general statement respecting American Indian rights and interests in the Colorado River Basin; its trust obligation to protect those rights.*—A proper perspective of Indian rights to the use of water and the Nation's obligation in regard to those rights is well stated in the following excerpt from an official report by the Interior Department, "The Colorado River, * * * A Comprehensive Departmental Report * * * March 1946":

"Within the Colorado River Basin, * * * are 29 Indian reservations, 1 nonreservation Indian school and 2 sanatoria. The Indian land totals 26,823,062 acres, of which 1,271,117 acres are in trust allotments, 24,557,040 acres in tribal ownership and 994,905 acres in Government ownership. The combined Indian population of the area totals more than 80,000 the majority of whom are full-bloods. The largest single group is the Navajos in Arizona and New Mexico, who total more than 50,000, practically all of who are full-bloods.

"These Indians and their resources in land and water rights are the special concern of the Federal Government. * * * These rights and obligations were recognized by the Colorado River Compact Commission as evidenced by article VII of the compact which reads as follows: 'Nothing in this compact shall be construed as affecting the obligations of the United States of America to Indian Tribes.' One of the Government's objectives in the development of the basin must be not only the protection of the Indian's purely legal rights but the discharge of its moral obligations as well." (P. 261)

In the paragraphs which immediately follow additional authorities and comment lend clarity to the nature of the rights of the American Indians so gravely imperiled by the Justice Department's course of conduct in the *Water Division No. 5 Adjudication* and in the *Eagle River Adjudication.*

[LXXIX] AMERICAN INDIAN RIGHTS TO THE USE OF WATER IN THE COLORADO RIVER AND ITS TRIBUTARIES ARE PRIVATE INTERESTS IN REAL PROPERTY HELD IN TRUST BY THE UNITED STATES FOR THE INDIANS

In the President's Message of July 8, 1970, sharply condemning the Interior and Justice Departments for inherent conflicts of interest, the President said this: "The United States Government acts as a legal trustee for the land and water rights of American Indians. These rights are often of critical economic importance to the Indian people * * *." They are, indeed, the difference between life and death. Continuing, the President stated: "* * * frequently they are also the object of extensive legal dispute. In many of these legal confrontations,

> the Federal Government is faced with an inherent conflict of interest. The Secretary of the Interior and the Attorney General must at the same time advance *both* the *National* interest in the use of land and water rights *and* the *private* interests of Indians in land which the Government holds as trustee.[144]

Legal aspect of the trust obligations of the United States in regard to American Indian rights to the use of water have been reviewed in detail.[145] Justice Department's publication provides a source, declaring the private nature of American Indian interests in real property, which include Indian rights to the use of water.

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[143] Appendix, page 30; Markwardt v. Guthrie, 18 Okla. 32; 90 Pac. 26 (1907); Phoenix Water Co. v. Fletcher, 23 Calif. 481, 487 (1863); Wright v. Best, 19 Calif. 2d 368; 121 P.2d 702 (1942); Adams v. Portage Irr. & Res. & Power Co., 95 Utah 1, 72 P.2d 648 (1937); 95 Utah 20, 81 P.2d 368 (1938).

[144] Congressional Record, Senate, July 9, 1970, pp. S10894, S10896, Sec. 8, Indian Trust Counsel Authority.

[145] Federal Encroachment on Indian Water Rights and the Impairment of Reservation Development, 91st Cong., 1st Sess., * * * A Compendium of Papers * * * Joint Economic Committee * * * Vol. 2, pp. 469 et seq.

By reason of their private character, just compensation to the Indians [LXXX] must be paid when the National Government in the exercise of its power of *eminent domain* takes those rights.[146]

Nature of the private Indian property interests held in trust for them by the Nation, including their rights to the use of water, are sharply differentiated under the law from "public property", and by law are required separately to be administered.[147]

[LXXXI] PRESIDENTIAL CONDEMNATION OF "INHERENT CONFLICT OF INTEREST" RESPTECTING ARMERICA INDIAN RIGHTS WHICH PREVADES JUSTICE DEPARTMENT—"NO SELFRESPECTING LAW FIRM WOULD EVER ALLOW ITSELF TO REPRESENT TWO OPPOSING CLIENTS IN ONE DISPUTE * * *" [148]

(*a*) *Condemnation of Justice Department "inherent conflict of interest"*

Presidential condemnation of "inherent conflict of interest" wihtin the Justice Department in regard to American Indian rights to the use of water must become the hallmark of a new day for the Indians. It is set forth in the heading of the present phase of the consideration. That conflict of interest within the Justice Department is exemplified by the *Water Division No. 5* and *Eagle River Adjudications.* All-pervasive nature of that conflict of interest and the devastation now being wrought upon the American Indians throughout Western United States extending far beyond the confines of the Colorado River, requires review.

(*b*) *Legislation introduced to correct Justice Department conflict of interest*

Acting in accordance with the President's Message condemning the Justice Department's inherent conflict of interest, corrective legislation was introduced in the last session of Congress. Bills were presented "To provide for the creation of the Indian Trust Counsel Authority, and for other purposes." [149] In substance the Congress would establish an Authority with power to represent American Indian in their struggle to preserve and protect their natural resources. That Authority would be independent of the Justice Department and Interior Department lawyers whose inherent conflict of interest the President condemned.

[LXXXII] (1) *Senate hearings in regard to inherent conflict of interest.*—Comprehensive hearings have been held by the Senate Subcommittee on Indian Affairs in regard to the legislation mentioned above.[150]

(2) *Secretarial statement as to need to correct Interior and Justice conflict of interest.*—Senators and Interior Department officials testified at length and in detail in regard to the grave damage to the Indians by reason of the conflict of interest in both the Interior and Justice Departments respecting Indian natural resources. American Indian representatives suffering at first hand from the conflicts, emphasized the great need for the legislation.

Assistant Secretary Harrison Loesch outlined in detail the dilemma created by the conflict. How the conflict permeates all aspects of American Indian rights was underscored by Assistant Secretary Loesch in this colloquy:

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[146] Federal Eminent Domain, Department of Justice. Sec. 15. What constitutes "private property" under the Fifth Amendment. Page 56.

* * * * * * *

N. *Property of Indian wards.*—As guardian of the Indian wards, the United States has the power of management and control over lands occupied by the tribes or Indian allottees. Such lands prior to some division or allotment in severalty, are held by the tribe in common. While strict legal title is often in the United States, under the treaties, statutes, or executive orders creating their reservations, the Indian tribes usually have a full beneficial interest has been treated for all practical purposes as equivalent to ownership of the land itself. Thus when there is a taking of the whole tribal interest within the meaning of the Fifth Amendment, the Government must include as part of just compensation to the tribe the value of the natural resources on the land such as timber or minerals. Certain profits á prendre, such as the right to take fish or gather herbs, occasionally granted to Indian tribes, are also regarded as property rights. Pages 76 & 77.

See page 66—E. Interests in real property * * *.

See *United States* v. *Gerlach Live Stock Company,* 339 U.S. 725 (1950).

[147] Federal Encroachment on Indian Water Rights and the Impairment of Reservation Development, 91st Cong., 1st Sess., * * * A Compendium of Papers * * * Joint Economic Committee * * * Vol. 2, pp. 490 et seq.

25 U.S.C. 1 et seq ; 5 U.S.C. 485 ;

Handbook of Federal Indian Law, Cohen, pp. 33 et seq. ; 94 et seq.

[148] Congressional Record, Senate, July 9, 1970, pp. S10894, S10986, Sec. 8, Indian Trust Counsel Authority.

[149] H.R. 18727, S. 4165, 91st Congress, 2d Session.

[150] Hearings Before the Subcommittee on Indian Affairs, Committee on Interior and Insular Affairs, United States Senate, "The President's Recommendations On Indian Policy." September 21, 25, 1970.

"Senator McGovern. And you are convinced the members of that [Pyramid Lake] task force are free of the conflict-of-interest charge that might be raised, where a complicated matter of this kind is to be resolved.

* * * * * * *

"Mr. Loesch. I question, Mr. Chairman, whether in any such situation you can get rid of, in a committee or a task force, an inherent conflict of interest, because members of the task force are Federal employees who, in their daily jobs belong to some bureau or other.

* * * * * * *

"Mr. Loesch. The conflict of interest is certainly not confined, Mr. Chairman, to the Department of the Interior, and I think that we have tried very hard in the Department of [LXXXIII] Interior to resolve those conflicts.

"The conflict spread all across the Government, and it is for this reason that an independent legal agency to attend to those conflicts is needed." [151]

It is impossible to perceive a more authoritative source than Assistant Secretary Loesch. He is daily confronted with the inherent conflict of interest in the Interior Department. His obligations entail that of acting as the agent for the Indian Trustee, the United States, and for agencies of the Federal Government now and historically in conflict with those Indian interests.

(3) *Justice Department conflict of interest most recently analyzed by report to Senate Judiciary Committee.*—A most recent study published by the Subcommittee on Administrative Practice and Procedure of the Committee on the Judiciary, fully documents the Justice Department conflict of interest.[152] Great significance must be ascribed to that publication by the Senate Judiciary Committee. It brings to focus the incredible duality of obligations in which the Justice Department is placed by its "inherent conflict of interest."

(4) *Conflict of interest in regard to American Indian property interests admitted by Justice Department.*—It is admitted by the Justice Department officials—it could not be denied—that it purports to represent opposing Indian and non-Indian interests in the same litigation. This statement was [LXXXIV] made in the Justice Department's opposition to the legislation which has been discussed above:

"At the present time there is an Indian Division in the Office of the Solicitor, Department of the Interior, which serves as advisor to the Secretary of the Interior and the Bureau of Indian Affairs on legal matters. Litigation for [a] the purpose of enforcing or protecting rights possessed by Indians because of their being under the protective arm of the United States, and [b] the defense of claims brought against the United States and its officers by Indians and Indian tribes, are handled by the Land and Natural Resources Division of the Department of Justice." [153]

Full impact of that conflict of interest upon the American Indians cannot be measured. That the Indians have been, are now and in the future will be, unless immediate corrective action is taken, grievously injured by it is an indisputable fact.

DENIGRATION BEFORE THE SUPREME COURT OF THE AMERICA INDIAN RIGHTS TO THE USE OF WATER—DISASTROUS TO THE INDIANS; (a) GREATLY AIDS JUSTICE DEPARTMENT IN INDIAN "TAKING" CASES NOW PENDING BEFORE THE INDIAN CLAIMS COMMISSION, COURT OF CLAIMS AND ELSEWHERE; AND IN FUTURE LITIGATION; (b) GREATLY AIDS JUSTICE DEPARTMENT IN REPRESENTING INTERIOR'S RECLAMATION BUREAU AND OTHER FEDERAL AGENCIES WHICH ARE NOW AND HAVE BEEN INVADING INDIAN RIGHTS TO THE USE OF WATER THROUGHOUT WESTERN UNITED STATES

Reference has been made to the divided obligations of the Justice Department. It is the aggressive "adversary" against the Indians in the proceedings before the Indian Claims Commission and the Court of Claims, a matter of extended public record in both tribunals. In those courts and in many cases in Federal district courts [LXXXV] the Justice Department vigorously attacks Indians' titles, claims, and equities.[154] Indeed, personnel of the Indian Claims Section of the Land and Natural Resources Division, Department of Justice, may be the most important, best staffed and competent in that Division. Its legal position is of necessity frequently diametrically opposed to the position of the General Litigation Section which has the obligation of representing the Indians' interest so vigorously opposed by the Indian Claims Section. Both Sections are administered by the same Assistant Attorney General—who, as stated above, admits the conflict of interest. All appellate cases in the ultimate, for and against the Indians, are the responsibility of the Solicitor General and his staff; hence, the grave contradictions in the *Eagle River* and *Water Division No. 5 Adjudications.*

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[151] Hearings Before the Subcommittee on Indian Affairs * * * United States Senate, * * * September 21, 25, 1970, P. 36, lines 4–14; P. 37, lines 6–12.

[152] 91st Cong., 2d Sess., Committee Print, "A Study of Administrative Conflicts of Interest in the Protection of Indian Natural Resources, Subcommittee on Administrative Practice and Procedure * * * Committee on the Judiciary.

[153] Undated letter from the Assistant Attorney General, Land and Natural Resources Division, to Mr. Kenneth R. Cole, Jr., Deputy Assistant to the President for Domestic Affairs, The White House, Washington, D.C.

A key defense relied upon by the Justice Department against Indians who are deprived of their homes and abiding places, has been stated as follows:

"* * * The Indian title [under certain circumstances] as against the United States is merely a title and right to the perpetual occupancy of the land with the privilege of using it in such mode as they see fit until such right of occupation has been surrendered to the government." [155]

[LXXXVI] From the same source it is stated that when the National Government forces the Indians to abandon the land which they occupy, they are not entitled to just compensation under the Fifth Amendment of the Constitution. Executive order Indian Reservations, says the same source, do not invest Indians with compensable interests in the absence of Congressional recognition, express or implied, of the Indian title to their lands.[156] Hence the course of the Justice Department before the Supreme Court and in the courts below, is not beyond understanding, though not justified.

(*a*) *Denial by Justice Department of Indian interest in Colorado River and its tributaries related to present and potential claims*

Justice Department's anti-Indian position respecting the interests and the reasons for it, have recently been succinctly stated in these terms:

"* * * the defense of Indian Claims Commission proceedings forces upon that Department the role and also the mentality of being an adversary to many Indian claims to natural resources." [157]

That role of adversary against the Indians is epitomized by its position before the Supreme Court in the *Eagle River* and *Water Division No. 5 Adjudications.* Its cryptic footnote to the Court—"To the best of our knowledge, none of the reserve water rights claimed by the United States in Water Division No. 5 * * *" for public land which had been withdrawn for public use, "relate to Indian lands." [158] **[LXXXVII]** Meaningless on its face, that quoted excerpt partakes of meaning when consideration is given to the Executive Order Reservation water rights decreed to them by the Supreme Court.[159] Everything points to the seizure of the main stream decreed rights of the Indians to which reference has been made, for use by the Central Arizona Project. Hence, Justice is confronted with this dilemma as is the Interior Department: Recognize before the Supreme Court that the Indians have rights to the use of water in the main stream and its tributaries and it will in effect be a declaration against interest on the part of those seizing Indian rights, if the Indians seek either to restrain that seizure or remuneration for the loss of those rights.[160]

Justice Department's failure to assert in the *Water Division No. 5* and in the *Eagle River Adjudications* the main stream Supreme Court decreed rights of the Fort Mojave, Chemehuevi, Colorado River, Cocopah and Fort Yuma Indian Reservations, can only be viewed as an attempted denial of those rights within the State of Colorado in those Adjudications. Hence, as stated earlier, the cryptic statement from the above quoted footnote to the Court, is a clear violation of the Nation's Trust obligation to the Indians and a breach of responsibility owing to the Supreme Court.[161] Gravest aspect of the Justice [LXXXVIII] Department's course of conduct is the denial of the main stream Indian Reservations of having their day in court respecting their rights in the main stream of the Colorado River and its tributaries. It is not for the Justice Department to adjudge, declare and determine whether those Indians have rights within the State of Colorado. Only by a final determination on the subject of those rights within the State of Colorado by a court of competent jurisdiction, can those rights be adjudged or denied. It is on that concept of the Nation's obligations to the Indians, in the words of the President in his July 8, 1970 Message, that the United States as Trustee is obligated to advocate the Indian position "* * * without reservation and with the highest degree of diligence and skill." [162]

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[154] See 25 U.S.C. 70 n; 25 U.S.C. 345;
For a general statement of the responsibility respecting the Indian Claims Commission, see 41 Am. Jur. 2d, Indians, Sec. 21 and 22, pages 844–845.

[155] 41 Am. Jur. 2d, Indians, Sec. 23, p. 845.

[156] 41 Am. Jur. 2d, Indians, Sec. 25, page 847.

[157] 91st Cong., 2d Sess., "A Study of Administrative Conflicts of Interest in the Protection of Indian Natural Resources", Subcommittee on Administrative Practice and Procedure, Committee on the Judiciary—"Discharge of the Federal Trust Responsibility to Enforce Claims of Indian Tribes: Case Studies of Bureaucratic Conflict of Interest—Reid Peyton Chambers.

[158] Appendix, Page 79, footnote 3.

[159] See Plate I and facing page; page 22, footnotes 53; See review of Indian and invested rights to the use of water in rivers and their tributaries, page 54 *supra.*

[160] *Note:* A careful investigation during a four (4) year period of the title of Indians with decreed rights evidences recognition and confirmation of the Indian title protecting those titles under the Constitution. Hence, the unfortunate-unfitting-course adopted by the Justice Department will not aid its "adversary" role against the Indians.

(*b*) *Erroneous statements by Justice Department to the Supreme Court respecting American Indian rights to the use of water—refusal of Justice Department to correct erroneous statements.*—Indians' *Winters Doctrine* rights to the use of water have been reviewed in detail.[163] Indian retention of their immemorial rights to the use of water when their interests were conveyed to the United States by treaty or agreement, has been extensively discussed. Indian ownership of the rights of fishery in various streams was adjudged in *Winans*.[164] Ownership of immemorial rights to the use of water [LXXXIX] retained by the Indians is the Supreme Court ruling in *Winters*. Particular reference has been made to the Supreme Court's statement controlling in that case in regard to the May 1888 agreement pursuant to which the Indians retained—did not grant—their immemorial rights to the use of water.[165] There is a coalescence of the tenets of both *Winans* and *Winters* regarding the retention by the Indians of their immemorial rights to the use of water in *Ahtanum*.[166]

Let this fact be emphasized: In each of those cases the title to the rights to the use of water involved was retained by—not granted to—the Indians either expressly or impliedly by the United States. Most assuredly in those cases the rights to the use of water were not reserved for the use of the United States. Yet, in grave error the Justice Department says to the Supreme Court this:

"Reserved rights entitle the United States to use as much water from sources on land withdrawn from the public domain as is necessary to fulfill the purposes for which the lands were withdrawn, * * * Winters v. United States, 207 U.S. 564, 577; Arizona v. California, 373 U.S. 546, 598, 601." [167]

Winters, as reviewed above, is a reservation of rights to the use of water by by the Indians for *themselves*, not for the "United States to use * * *." Indeed, the Supreme Court in *Winters* specifically [XC] adjudged "The Government is asserting the rights of the Indians." [168]

Errors by the Justice Department to the Supreme Court are reiterated and repeated throughout its *Eagle River Adjudication* brief:

"* * * United States unquestionably has the right to use as much water * * * on lands withdrawn from the public domain * * *" [169]

Winters is again cited to support that erroneous statement, as is *Arizona* v. *California*. Neither decision supports the erroneous concept.

Continuing in error to the Supreme Court, the Justice Department brief in the *Eagle River Adjudication*, says this: "In Winters where the United States asserted this right with respect to an Indian reservation * * *"—a quotation stripped from context is set forth.[170] Nature of that quoted error is obvious—

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[161] See above, a review of rights of the Indians in the main stream and tributaries of the main stream of the Colorado River within Colorado, page 54.

[162] Congressional Record, Senate, July 9, 1970, pp. S10894, S10896, Sec. 8, Indian Trust Counsel Authority.

[163] See above, pages 37 et seq.

[164] See above, pages 40 et seq.

[165] See page 41 et seq. Winters: "The [Winters] case, as we [the Supreme Court] view it, turns on the agreement of May, 1888, * * *" between the Indians and the United States pursuant to which the Indians retained their immemorial rights to the use of water.

[166] See above, page 49 et seq.

[167] Appendix, Page 20.

[168] See above, page 44. *Note: Arizona* v. *California* likewise cited will be separately considered. It underscores the Justice Department misstatement to the Court.

[169] Appendix, Page 21.

[170] Appendix, Page 21. *Note:* The statement in *Winters* stripped from context by the Justice Department simply declares that the Indian rights retained by them in their May 1888 agreement were impliedly reserved against the State of Montana by the United States when Montana was admitted to the Union. Efforts to blur the main thrust of the *Winters* opinion is unworthy of the high degree of skill and diligence required by the Justice Department. See above, Immemorial Indian Rights" pages 42 et seq., footnote 99 reviewing full history of *Winters* facts and law.

"the right" purportedly asserted by the United States was not for its "use" but rather in the explicit words of the Court in *Winters*—the "Government" was asserting the right of the Indians retained by them in their May 1888 agreement with the United States.[171]

[XCI] Erroneous statements that the Indian rights were "reversed" by the United States for use of the United States pervade every part of the Petition for Certiorari in the *Eagle River Adjudication* and in its brief in that adjudication. Hallmark of that erroneous presentation to the Supreme Court is this statement: "Reserved rights have been defined by this Court as the entitlement of the United States to use as much water from sources on land withdrawn from the public domain * * * *Arizona* v. *California,* 373 U.S. 546, 595–601." [172] "Reserved rights" [XCII] have not been defined as the Justice Department states, in *Arizona* v. *California*, or elsewhere. That Court in the last mentioned citation did not declare the "reserved rights" were for the "United States to use." On the first page of the citation in the last quoted excerpt from *Arizona* v. *California* [173] the Court specifically referred to the mainstream Congressional and Executive Order Indian Reservations and recited: "The Government, on behalf of five Indian Reservations in Arizona, California and Nevada, asserted rights to water in the mainstream of the Colorado River." Repeatedly the Justice Department is misrepresenting principles enunciated in the decisions adjudging and declaring Indian rights to the use of water citing the 1963 Supreme Court decision of *Arizona* v. *California*.[174]

It is essential carefully to review the precise language of that decision. Reject out of hand the Justice Department assertion that the Court declared Indian rights to the use of water entitled the "United States to use" Indian water. That misstatement cannot be found either expressly or impliedly in *Arizona* v. *California* or any other decision. In the 1963 decision, having reiterated and reaffirmed the tenets of law upon which the American Indian Rights to the use of water are predicated, as reviewed above,[175] what the Court did say was this: "* * * the principle underlying the reservation of water rights for Indian Reservations was equally applicable to other federal establishments such as National Recreation Areas and National Forests." [176] [XCIII] That power of the National Government to exercise rights to the use of water, title to which resides in it, in connection with withdrawn public domain—subject to any rights acquired antecedent to withdrawal, says the Court, stems from "* * * the broad powers of the United States to regulate navigable waters under the Commerce Clause and to regulate government lands under Art. IV, §3, of the Constitution."[177]

It is reiterated: There is not a single authority to support the Justice Department statement in regard to either the immemorial rights of the Indians or their invested rights, which entitled "* * * the United States * * * to use * * *" Indian water. That fact gave rise to the demand from one of the Nation's outstanding law firms in the field of Indian law, to the Justice Department: "We request that in future briefs filed by the United States in these cases the United States call the attention of the Supreme Court to the error in the statements heretofore made in the briefs filed in Docket No. 87 [*Eagle River Adjudication*].''[178] As reviewed above, response to that demand to correct "the error in the statements" to the Supreme Court was the cryptic footnote discussed above. Failure to correct that mistake as requested in the last quoted excerpt, shocks the conscience. For the future not only of the Indian people but for the Nation as a whole, that adamant refusal by the Justice Department correctly to present a legal proposition to the Supreme Court, evidences a sinister amorality due to the inherent conflict of interest within that Department, in which, as the President stated to Congress, "No self-respecting" law firm would engage.[179]

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[171] See above, pages 44 et seq.

[172] Appendix, Page 2—Petition for Certiorari; *Note:* Appendix, pages 1, 2–3; 19, 20–21. An all-pervasive error in the Justice Department's presentation to the Supreme Court is this variously repeated statement predicated almost exclusively upon the Indians' *Winters Doctrine* as enunciated by the Supreme Court in the year 1908: "* * * the *United States* unquestionably *has the right to use* as much *water* from sources on lands withdrawn from the public domain as is necessary to fulfill the purposes for which the lands were withdrawn, subject only to water rights vested as of the date of the withdrawal. *Arizona* v. *California,* 373 U.S. 546, 595–601; *Winters* v. *United States,* 207 U.S. 564; *United States* v. *Ahtanum Irrigation District,* 236 F.2d 321 (C.A. 9), certiorari denied, 352 U.S. 988; *United States* v. *Walker River Irrigation District,* 104 F.2d 334, 336–337, 339–340 (C.A. 9). In *Winters,* where the United States asserted this right with respect to an Indian reservation, this Court said (207 U.S. at 577): [T]he power of the Government to reserve the waters and exempt them from appropriation under the state laws is not denied and could not be. *The United States* v. *The Rio Grande Ditch and Irrigation Co.,* 174 U.S. 690, 702; *United States* v. *Winans,* 198 U.S. 371. * * *."

[What the Highest Court actually stated, but Justice Department does not recite: "The Government is asserting the rights of the Indians" (207 U.S. 546, 576 (1908))—not of the United States—vastly different propositions. As is reviewed. *Winters Doctrine* Indian rights to the use of water are under concerted attack because of their great value. If this failure to distinguish Indian private rights from federal reserved rights weakens the principles of the *Winters Doctrine,* the Indians can be more easily deprived of their rights either by legal or illegal seizure.]

Every case cited pertains either exclusively to Indian rights or, as in the case of *Arizona* v. *California,* predominantly to Indian rights. Yet the Justice Department in error declares the United States "has the right to use" that water. Those are Indian rights, private in character, held in trust by the United States for the benefit of the Indians—not as the Justice Department says, for the "use" of the United States.

[173] 373 U.S. 546, 595 (1963).

[174] Id. at 595–601.

[175] See *supra,* page 37 et seq.

[176] 373 U.S. 546, 601 (1963).

[177] Arizona v. California, 373 U.S. 546, 597–598 (1963).

[XCIV] (c) *Denigration of Indian rights to the use of water would be accomplished by reversal of Indian authorities by needless request to "reaffirm" Winters and other Indian decisions*

Having misstated to the Supreme Court the law respecting Indian rights to the use of water, the Justice Department, without reason or justification, requests the Supreme Court to "reaffirm" the Indians' *Winters Decision* and others. This odd language preceding that needless request in regard to the misstated legal proposition requires specific reference. Justice stated to the Highest Court: "While the Colorado Supreme Court has not specifically denied the existence of federal reserved water rights in Colorado or elsewhere in the West, its statements casting doubt on their existence underline our concern that State courts and State law together would, in fact, eliminate such rights." [180] As emphasized above, the principles of law reiterating and reaffirming the Winters Doctrine concepts as related to invested Indian rights to the use of water, were announced by the Court as recently as 1963 in *Arizona* v. *California*.[181] Continuing, the Justice Department, having admitted that the Colorado Supreme Court did not deny the principles of the *Winters Doctrine* [182] but stated in effect—wait until the trial on the merits—says this to the Supreme Court: "For this reason, we urge this Court specifically to reaffirm the principle that the United States has reserved water rights in the western States, including Colorado and other States with similar constitutional provisions." [183]

[XCV] For the Justice Department to invite a challenge to the principles of Indian law in the "state of Colorado and other States with similar constitutional provisions" [184] while denying Indian interests, underscores the gravity of the problems confronting the Indian people by these adjudications. Failure properly to present the nature of the Colorado State police regulations enacted into law by the Colorado legislature is one of the gravest deficiencies of the Justice Department's brief. It is manifest, as will be reviewed, that Colorado's authority to provide methods for persons and corporations within Colorado's jurisdiction for acquiring and having administered their rights to the use of water cannot be construed to apply to Indian rights to the use of water or to subject them to that type of police regulation by the State. Indeed, it would be unconstitutional, as will also be emphasized, to subject the Nation's lands or rights to the use of water to Colorado's police regulations whether they stem from a constitutional proviso of the State or State statutes. Failure of the Justice Department to discuss—indeed, to mention—those basic propositions of law highlights the deficiencies of its presentation to the Supreme Court.

(d) *Denigration of Indian rights by Justice Department greatly aids Reclamation Bureau and other agencies which invade Indian rights to obtain, without legal authority, the water supplies for their projects.*

From its inception Interior's Reclamation Bureau has invaded Indian rights to the use of water for its projects. There have been **[XCVI]** chronicled some of the Reclamation projects which constitute crass seizure of Indian rights to the use of water.[185] Planned destruction of Pyramid Lake by the Reclamation Bureau is a prime example of that Bureau's wanton invasion of Indian rights. Adamant refusal to protect Indian rights to the use of water by the Justice Department has greatly aided Reclamation in its course of outrageous conduct against the Indians.[186]

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[178] Appendix, Page 73.

[179] See above, page 63, "Presidential Condemnation of 'Inherent Conflict of Interest' respecting American Indian rights which pervades Justice Department * * *."

[180] Appendix, Page 22.

[181] See above, page 52 "(3) *American Indian invested rights to the use of water*".

[182] Appendix, Page 15.

[183] Appendix, Page 22.

[184] Appendix, Page 15.

[185] "Federal Encroachment on Indian Water Rights and the Impairment of Reservation Development" * * * 91st Cong. 1st Sess., pp. 493 et seq.

[186] Id. at page 497 et seq. "Destruction of Pyramid Lake * * *."

Most recent events in the cooperation of the Justice Department with Reclamation interests in the seizure of Indian rights to the use of water are reviewed by the above mentioned study of the Senate Committee on the Judiciary.[187] That report reveals the expenditure by Reclamation of millions of dollars in constructing a non-Indian project through the commitment and use of rights to the use of water decreed to the Yakima Indians.[188] A review of the invasion by the Reclamation Bureau of the Pueblo rights to the use of water on the Rio Grande is instructive of the all-pervasive amorality of that Bureau and the Justice Department's cooperation with it.[189]

Threat to the rights to the use of water of the Agua Caliente Tribe of Palm Springs, California, by the Corps of Engineers, Department of the Army, is a matter under study at the present time. Invasion of the Indians' rights by the Bureau of Land Management and the Bureau of Sport Fisheries and Wildlife, Department of the Interior, have been [XCVII] analyzed in detail.[190] Reclamation's Central Arizona Project being constructed without a water supply, is but another example of a grievous threat to the existence of the Colorado River Indians.[191]

Justice Department attempts—but fails—to represent the American Indians whose rights are seized and encroached upon by the same Federal agencies which it vigorously supports against the Indians.

Retraction by the Justice Department of its misrepresentation to the Supreme Court of its definition of "reserved rights" is essential. Its adamant refusal to act on the basis of its legal and moral obligations constitutes a full disclosure of the inherent conflict of interest which the President condemned, all as has been reviewed.[192]

FAILURE OF THE JUSTICE DEPARTMENT PROPERLY AND ADEQUATELY TO REPRESENT THE AMERICAN INDIAN PEOPLE BEFORE THE SUPREME COURT AND IN THE COURTS BELOW RESPECTING 43 U.S.C. 666 [193]

There have been reviewed above salient facts and principles of law relating to the American Indian interests before the Supreme Court and in the courts below in the two adjudications which are the [XCVIII] subject matter of this consideration. Two elements are involved: (1) Indian title to rights to the use of water in the main stream of the Colorado River and its tributaries; [194] (2) The precedents, Nationwide in scope, that must be expected by any decision of the Supreme Court whether it accepts or rejects the Justice Department's position in regard to the immunity of "reserved rights" as erroneously defined by that Department to the Supreme Court.[195] Cryptic nature of the Justice Department denial of Indian interests to the Supreme Court in its footnote reference, must be condemned.[196] Yet, as stated above, the footnote is subject to understanding when read in the light of the all-pervasive inherent conflict of interest which subverts the activities of the Justice Department respecting its responsibilities to the American Indians.[197]

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[187] "A Study of Administrative Conflicts of Interest * * *" Reid Peyton Chambers, 91st Cong., 2d Sess., page 9.

[188] Id. at page 17.

[189] Id. at page 18 et seq.

[190] Federal Encroachment on Indian Water Rights and the Impairment of Reservation Development, 91st Congress, 1st Session, * * * A Compendium of Papers * * * Joint Economic Committee * * * Vol. 2, p. 497 et seq.

[191] See above, page 35.

[192] See above, pages 63 et seq.

[193] See Appendix, page 1 et seq. : 43 U.S.C. 666 :

Suits for adjudication of water rights. (a) Joinder of United States as defendant; costs—

Consent is given to join the United States as a defendant in any suit (1) for the adjudication of rights to the use of water of a river system or other source, or (2) for the administration of such rights, where it appears that the United States is the owner of or is in the process of acquiring water rights by appropriation under State law, by purchase, by exchange, or otherwise, and the United States is a necessary party to such suit. The United States, when a party to any such suit, shall (1) be deemed to have waived any right to plead that the State laws are inapplicable or that the United States is not amenable thereto by reason of its sovereignty, and (2) shall be subject to the judgments, orders, and decrees of the court having jurisdiction, and may obtain review thereof in the same manner and to the same extent as a private individual under like circumstances: *Provided,* That no judgment for costs shall be entered against the United States in any such suit.

[194] Pages 10 et seq. ; pages 37 et seq.

[195] Pages 66 et seq.

[196] Appendix, Page 79, footnote 3.

[197] Appendix, Pages 66 et seq.

Comprehension of the threat to the Indian interests requires further analysis of the second sentence of the cryptic footnote. To the Supreme Court Justice Department says that if it should decide that 43 U.S.C. 666 is applicable to the "federal reserved rights" [XCIX] which that Department has incorrectly defined to include Indian rights "* * * there would remain the further question (not presented by this case) whether" 43 U.S.C. 666 "* * * covers water rights held by the United States in trust for specific Indian tribes—frequently pursuant to treaty—rather than for the benefit of the general public." [198] That the Justice Department, Respondents and Amici Curiae proceeded upon the basis that the Indian rights were before the Court until forceful Indian objection was interposed to the Solicitor General, is too clear for doubt—hence, the record can only safely be read as including Indian rights.[199] As emphasized, the almost total reliance upon Indian law respecting their rights to the use of water belies the footnote representation to the Supreme Court. Underscoring the tenuousness of the Justice footnote is the repeated erroneous statement that "reserved rights" were defined by the Supreme Court as meaning "the entitlement of the United States [not the Indians] to use water * * *." [200]

Specific reference in the footnote to "treaty" rights in itself contsitutes a grave peril to the rights of the American Indians whose rights are predicated upon Executive Orders and Acts of Congress.[201] Increasing that peril to the Indians on the main stream of the Colorado River [202] is the specific declaration of the Supreme Court that those [C] rights stem from Executive Orders and an Act of Congress [203]—not treaties. It is, moreover, the citation set forth below in which the Justice Department—in error—states that Supreme Court defined "reserved rights" entitles the United States—not the Indians—to "use the waters thus reserved.[204] On that background reference will be made to the principles which preserve the immunity of the Indian rights to the use of water from suit, irrespective of the ultimate disposition of the issues presented to the Supreme Court for determination.

(a) *American Indian rights to the use of water are immune from the application of 43 U.S.C. 666*

"These Indian Nations are exempt from suit without Congressional authorization." [205] That quoted excerpt from a keystone decision by the Supreme Court in regard to Indian immunity from suit is controlling in regard to 43 U.S.C. 666. The Indian rights to the use of water do not come within the purview of it.

Recently Arizona's Supreme Court said this specifically in regard to the Colorado River Indian Tribe, which has rights in the main stream of the Colorado River decreed to it by the Supreme Court: [206]

"An impressive body of law has developed recognizing the immunity of Indian tribes from suit." [207]

[CI] Following a recitation of the numerous authorities on the subject the Arizona court, regarding the Colorado River Tribe, said this:

"It is clear that Congress alone must determine the extent to which immunities afforded tribal status are to be withdrawn." [208]

A condition precedent to subjecting Indian rights to the use of water to State court jurisdiction, adjudication, control and administration, which is wholly lacking in 43 U.S.C. 666, is precise action by Congress in regard to those Indian rights. Supporting that conclusion is this statement from a frequently cited decision in regard to the Choctaw Tribe of Indians: "* * * Being a domestic and dependent state, the United States may authorize suit be brought against it. But for obvious reasons, this power has been sparingly exercised. It has been the settled policy of the United States not to authorize such suits except in a few cases, where the subject-matter of the controversy was particularly specified, and was of such a nature that the public interest, as well as the interests of the [Indian] Nation seemed to require the exercise of the jurisdiction. It has been the policy of the United States to place and maintain the Choctow Nation and the other civilized Indian Nations in the Indian Territory, so far as relates to suits against them, on the plane of independent states.'' [209]

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[198] See above, pages 4, 5 et seq. ; pages 79 et seq.

[199] See above, pages 10 et seq.

[200] See above, pages 7 et seq. ; pages 66 et seq.

[201] See above analysis of Indian Treaty rights "Immemorial rights" and Indian "Invested rights", pages 37 et seq. ; pages 52 et seq.

[202] See Plate I and facing sheet.

[203] Arizona v. California, 373 U.S. 546, 596 et seq. (1963).

[204] Appendix, Page 2 "Statement" second full paragraph.

[205] United States v. United States Fidelity Co., 309 U.S. 506, 512 (1939).

[206] See Plate I and facing page ; See page 21 et seq.

[207] Morgan v. Colorado River Indian Tribe, an organized Indian Tribe, 103 Ariz. 425; 443 P.2d 421, 423 (1968).

[208] Morgan v. Colorado River Indian Tribe * * * 103 Ariz. 425 ; 443 P.2d 421 424 (1968).

In declaring the Colorado River Indian Tribe immune from suit the Arizona court cited first and favorably the *Choctaw Case.*[210] [CII] Recently the numerous Supreme Court cases and others were cited underscoring the Indian immunity from suit involving the Chippewas: "* * * Indian tribes under the tutelage of the United States are not subject to suit without the consent of Congress * * *." [211] Important to the Colorado Indians is the principle that even where there has been a waiver of Indian immunity, it is strictly construed.[212]

In clear and concise terms the Supreme Court stated the reason for the necessity of a precise and specific waiver of sovereign immunity by the Congress before that Indian immunity could be withdrawn: "It is as though the [Indian] immunity which was theirs as sovereigns passed to the United States for their benefit, as their tribal properties did. Possessing this immunity from direct suit, we are of the opinion it possesses a similar immunity from cross-suits." [213] The Supreme Court then re-emphasized the need for explicit waiver of immunity by Congress if it was to withdraw the Indian immunity from suit: "The Congress has made provision for cross-suits against the Indian Nations by defendants. This provision, however, is applicable only to 'any United States court in the Indian Territory.' " [214] As the parties attempting to proceed by court action against the Indians failed to come within the limited scope of that waiver, their suit was dismissed for want of jurisdiction by the Supreme Court.

[CIII] A *caveat important here* was then declared by the Highest Court: "* * * it is said that there was a waiver of immunity by a failure to object to the jurisdiction [in the courts below]." Rejecting that error by Federal lawyers, the Court said this: "It is a corollary to immunity from suit on the part of the United States and the Indian Nations in tutelage that this immunity cannot be waived by officials. If the contrary were true, it would subject the Government to suit in any court in the discretion of its responsible officers. This is not permissible." [215] Failure of the Federal officials properly to interpose the objection to suit against the Indians did not preclude raising the issue in the Highest Court: "As no appeal was taken from this Missouri judgment, it is subject to collateral attack only if void. It has heretofore been shown that the suability of the United States and the Indian Nations, whether directly or by cross-action, depends upon affirmative statutory authority. Consent alone gives jurisdiction to adjudge against a sovereign. Absent that consent, the attempted exercise of judicial power is void. The failure of officials to seek review cannot give force to this exercise of judicial power." [216]

Efforts to subject the American Indians to State courts in regard to their rights to the use of water—in that manner to deprive them of their rights—is very much a part of the Indian struggle for survival in Western United States. An authority in [CIV] point on the subject reviews the efforts and rejects the attempt:

> "We next notice the court's conclusion that a 1925 state court adjudication of the respective rights of the white landowners as between themselves to the 75 percent of the flow of Ahtanum Creek, which had been allotted to them in the 1908 agreement, was a proceeding 'which binds the United States and bars any claim to that portion of the flow.'* * * The United States was not a party to that suit, although as the pretrial order recites, it had knowledge that the adjudication was proceeding and it had an opportunity to appear therein but decided against it. It is too clear to require exposition that the state water right decree could have no effect upon the rights of the United States. Rights reserved by treaties such as this are not subject to appropriation under state law, nor has the state power to dispose of them. Federal Power Comm'n v. Oregon, 349 U.S. 435, 444." [217]

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[209] Thebo v. Choctaw Tribe of Indians, 66 Fed. 372, 375 (C.A. 8, 1895).

[210] Morgan v. Colorado River Indian Tribe * * * 103 Ariz. 425; 443 P.2d 421, 423 (1968).

[211] Twin City Chippewa Tribal Council v. Minnesota Chippewa Tribe, 370 F.2d 529, 532 (C.A. 8, 1967).

[212] See Martinez v. Southern Ute Tribe, 249 F.2d 915 (C.A. 10, 1957).

[213] United States v. United States Fidelity Co., 309 U.S. 506, 512–513 (1939).

[214] Id., at 513.

[215] United States v. United States Fidelity Co., 309 U.S. 506, 513 (1939).

[216] Id., at 514.

[217] United States v. Ahtanum Irrigation District, 236 F.2d 321, 328 (C.A. 9, 1956), Appellees' Cert. denied 352 U.S. 988 (1956); 330 F.2d 897 (1965); 338 F.2d 307; Cert. denied 381 U.S. 924 (1965).

That 43 U.S.C. 666, whatever it means, relates solely to the rights of the United States held for the public—not the private rights of the Indians held in trust for them—is clear from the express language of that quoted statute. Equally clear is that Congress did not subject the American Indian rights to the police regulations of the States in regard to jurisdiction, adjudication, control and administration.

(*b*) *Immunity of American Indian rights to the use of water from State police regulation, jurisdiction, adjudication, control and administration, has not been waived by the Congress under 43 U.S.C. 666 or otherwise*

Deficiencies pervade the Justice Department's presentation in the Supreme Court and the courts below as to the nature of the control purportedly exercised by Colorado over rights to the use of [CV] water within the scope of its jurisdiction. It is elemental that Colorado has no proprietary interest in the rights to the use of water in its streams. Indeed, the Colorado courts make no reference to title to rights to the use of water but relate only to "water".[218] It is elemental that "water" is vastly different from the rights to use water.[219] It is, of course, within Colorado's power to declare, as it did, that the principles of the doctrine of prior appropriation would adhere in that State. That declaration was in the proper exercise of the police power of the quasi sovereign.

At an early date Colorado's Supreme Court placed in proper perspective the character of the power which it exercises in regard to rights to the use of water. Respecting its regulations to adjudicate rights, the Colorado court emphasized: "They are in the nature of police regulations to secure the orderly distribution of water for irrigation purposes, * * *." [220] The Supreme Court of the United States in the first *Arizona* v. *California* decision [221] said this in regard to efforts to apply Arizona's police regulations respecting rights to the use of water, to the National Government:

> "[Arizona's] statutes prohibit the construction of any dam whatsoever until written approval of plans and specifications shall have been obtained from the State Engineer * * *. The United States has not secured such approval; nor has any application been made by Wilbur, who is proceeding to construct said dam in complete disregard of this law of Arizona.
>
> [CVI] "The United States may perform its functions without conforming to the police regulations of a State. * * * Wilbur is under no obligation to submit the plans and specifications to the State Engineer for approval."

It is undeniable that Colorado has never taken any steps to acquire rights to the use of water. From the same source in regard to the immunity of the National Government from Arizona's police regulations, this statement is taken, which fully evidences that Colorado did not acquire rights in the "water" alluded to in its Constitution:

> "To appropriate water means *to take* and *divert* a specified quantity thereof and put it *to beneficial use* * * * and, by so doing, to acquire * * * a vested right *to take* and *divert* from the same source, and to use and, consume the same quantity of water annually forever, subject only to the right of prior appropriations. * * * *the perfected vested right to appropriate water flowing* * * * *cannot be acquired without the performance of physical acts through which the water is and will in fact be diverted to beneficial use.*" (Emphasis supplied) [222]

Federal and State courts throughout Western United States on repeated occasions proceeded on the sound legal predicate that State regulations respecting rights to the use of water stem from police power and not from proprietary ownership of the rights. Utah's Supreme Court says this on the subject:

> "The statutory declaration that 'The water of all streams and other sources in this State * * * is hereby declared to be the property of the public' *does not vest in the state title or ownership of the water as a proprietor*. It is a community right available to all upon compliance with the law by which that which was once common to all may be brought within the domain of private right

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[218] See Appendix, Page 15.
[219] See above, pages 37 et seq.
[220] Nichols v. McIntosh, 19 Colo. 22; 34 Pac. 278, 280 (1893).
[221] Arizona v. California, 283 U.S. 423, 451 (1930).
[222] Arizona v. California, 283 U.S. 423, 459 (1930).

> [CVII] to use, or under certain circumstances private and exclusive possession and ownership." (Emphasis supplied) [223]

Bizarre nature of the contention that Colorado could seize by its Constitutional provision all of the Nation's rights to the use of water is demonstrated by the cited authorities. There is the travesty, if the concept is not rejected, of having virtually every jurisdiction in the Colorado River Basin, with the exception of Colorado, denying that the State "owns" in a proprietary sense all rights to the use of water of the Colorado River. The late L. Ward Bannister, an outstanding lawyer with respect to rights to the use of water in the State of Colorado, rejected in these terms the fallacy that Colorado could own "the water of the streams within that state" and that the other States did not own "the water": "If this be the only theory of supporting a power in the state to dispose of the waters, only some of the states [CVIII] would have the power, for only some have constitutional character." [224]

If Colorado by its Constitutional proviso seized all of the rights to the use of water within that State upon its admission, then the American Indians in the Colorado River Basin are confronted with a catastrophe for, as shown above, seventy percent (70%) of all of the water in the Colorado River drainage rises within that State and the Colorado decision, of course, has statewide application.[225]

(1) *Indian immunity from State police control guaranteed by the Constitution*

Immunity of Indians from State police control is basic and has long been recognized by the Supreme Court. On the subject that Court has declared: "Congress has also acted consistently upon the assumption that the States have no power to regulate the affairs of Indians on a reservation." [226] Continuing, in regard to Indian Immunity from State police regulations the Court declared:

> "Significantly, when Congress has wished the States to exercise this power it has expressly granted them the jurisdiction which *Worcester* v. *Georgia* had denied." [227]

[CIX] It was, of course, in *Worcester* v. *Georgia* [228] that the Constitutional immunity from State control was established, although in that case it was illegally abridged by the executive branch of the Federal Government.

Great significance must also be ascribed to the *Williams* case from which the preceding quotations have been taken. The northern portion of the Navajo Reservation is almost entirely dependent upon the "water" of the San Juan River which flows out of the State of Colorado.[229] If Colorado has seized the "water" of the San Juan River and its drainage within Colorado, it has clearly violated the Navajo Treaty of 1868.[230] That it has not seized those waters by its police regulations is too clear for question. Yet by failing to distinguish Indian rights to the use of water—private in character—from public rights, the Justice Department has imperiled the Navajo and all Indian rights.[231]

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[223] Wrathall v. Johnson, 86 Utah 50; 40 P.2d 755, 777 (1935); Vineyard Land & Stock Co. v. District Court of Fourth Judicial District of Nevada, 42 Nev. 1; 171 Pac. 166, 173, 174 (1918); Pacific Live Stock Company v. Lewis, 241 U.S. 440, 448, 449 (1915); Farm Investment Co. v. Carpenter, 9 Wyo. 110; 61 Pac. 258, 260 (1900); Enterprise Irr. Dist. v. Tri-State Land Co., 92 Neb. 121; 138 N.W. 171, 179 (1912); In re Willow Creek, 74 Ore. 592, 144 Pac. 505, 513, 514 (1914); Farmers Independent Ditch Co. v. Agricultural Ditch Co., 22 Colo. 513; 45 Pac. 444, 449 (1896); Farmers' High Line Canal & Reservoir Co., et al., v. Southworth, 13 Colo. 111, 134; 21 Pac. 1028, 1031 (1889); California-Oregon Power Co. v. Beaver Portland Cement Co., 73 F.2d 555, 562, 567 (C.A. 9, 1934); affirmed 295 U.S. 142 (1934). Note: The Supreme Court did not find it necessary to pass on the particular question of the power of the legislature to modify allegedly vested riparian rights but affirmed on other grounds. 3 Kinney on Irrigation and Water Rights, 2d ed., sec. 1341, pp. 2428, 2429. 2 Wiel, Water Rights in the Western States, 3d ed., sec. 1184, p. 1097.

[224] Bannister, *The Question of Federal Disposition of State Waters in Priority States*, 28 Harv. L. Rev. 270, 279 (1915). At p. 283, 287–88; citing the Colorado Constitution, (Colo. Const. art. XVI, sec. 5) Mr. Bannister continued: "Some of the Colorado-doctrine commonwealths bent on putting the waters as far as possible beyond the control of the federal government, have adopted constitutional provisions declaring the waters to be the 'property of the public' or the 'property of the sate.' Even these provisions which are substantially the same in effect are not considered as vesting the state with any property right in the waters or in their use but affirming sovereign jurisdiction over them."

[225] See above, pages 23 et seq.

[226] Williams v. Lee, 358 U.S. 217, 220 (1958).

[227] Id. at 221.

[228] 31 U.S. 515 (1832).

[229] See Plate I.

[230] 15 Stat. 667.

[231] See above, pages 6 et seq.; pages 66 et seq.

(2) *Failure of Justice Department to challenge as obiter dictum the Colorado decision of* Stockman v, Leddy; *failure to assert that Colorado's Constitutional proviso is simply a police regulation of "water"—not a claim of proprietary interest*

In declaring Congress had subjected the Nation's rights to the use of water to State control by 43 U.S.C. 666, Colorado's Supreme Court, among other things, said this:

> "We are not determining whether the United States has reserved water rights in connection with lands withdrawn subsequent to August 1, 1876, the date of Colorado's admission to the Union; nor, if so, whether these rights have priority over previously adjudicated rights. These questions properly should be decided **[CX]** after the United States presents its specific claims for adjudication and the issues of fact and law are clearly drawn." [232]

That Colorado decision is of transcendent importance to the American Indians and the Nation as a whole.

Failure of the Justice Department to analyze the case of *Stockman* v. *Leddy* [233] is demonstrative of its unusual approach to the key issues in the two adjudications. Without attempting to review the actual decision, the Justice Department says this:

> "The fact that Colorado was admitted into the Union prior to the date of the withdrawal here involved, with a provision in its constitution which the Colorado Supreme Court, in *Stockman* v. *Leddy*, 55 Colo. 24, construed as an assertion of ownership of all unappropriated waters within its borders, does not preclude ownership by the United States of reserved water rights in Colorado. Arizona v. California, 373 U.S. 546, 597–598." [234]

Facts of *Stockman* v. *Leddy* are simple. These excerpts are taken from it:

> "The immediate object of this action in mandamus by Stockman against the Auditor of State is to compel the latter to issue to him a warrant in the sum of $55.75 for services which he rendered to a joint legislative committee created by an act of our General Assembly. Session Laws of 1911, p. 671, c. 227. The principal purpose of the action, however, appears to be to determine the constitutionality of the statute." [235]

Having reviewed the cited Act, the Colorado Supreme Court stated it was "* * * a clear and conspicuous instance of an attempt by the General **[CXI]** Assembly to confer executive power upon a collection of its own members." Hence said Colorado's Court: "This is contrary to article 3 of our Constitution * * *" which divided the powers of the State of Colorado into "* * * legislative, executive and judicial * * *" [236] not very unusual: Having thus ruled on the issue before it, Colorado's Supreme Court did not allow payment of the $55.75. Incidental fact was that the claimed $55.75 pertained to an authorization by Colorado's legislature to investigate and take action in connection with the activities of the "* * * Reclamation Service and the Forest Service of the Federal Government" as those activities related to the "* * * right of this state to control the distribution of the waters * * *" within the State.[237]

Stockman v. *Leedy* reviews the Constitutional provision of the State. It quotes this excerpt from the provision: "The water of every natural stream, not heretofore appropriated, within the state of Colorado is hereby declared to be the property of the public * * *." It is to be observed, as reviewed in detail above, that the Constitutional proviso relates to "water" dedicated to the "public". On that background the court stated "* * * the federal government has, as we have just shown, given its consent that the waters of the natural streams of this state belong to the people, to the state, in its sovereign capacity, and that this right to their distribution and control within its borders is free from interference by any other sovereignty." [238] Fundamentally **[CXII]** the Supreme Court of Colorado applied the basic precepts of the law reviewed in detail above—that the States under their police power undoubtedly have authority to provide for the acquisition of rights in and the distribution of the waters under their jurisdiction. The Supreme Court of

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[232] Appendix, Page 15.

[233] 55 Colo. 24; 129 Pac. 220 (1912).

[234] Appendix, Page 22.

[235] Stockman v. Leddy, 55 Colo. 24; 129 Pac. 220, 221 (1912).

[236] Stockman v. Leddy, 55 Colo. 24; 129 Pac. 220, 223 (1912).

[237] Id. at 221.

[238] Id. at 222.

Colorado did not state that Colorado owned rights to the use of water—the usufructuary right which is an interest in real property [239]—in a proprietary sense. It is clear that Colorado's constitutional proviso was simply an exercise of its police power regarding matters within the purview of its authority. Hence there is no basic conflict with the power of the Federal Government to exercise its rights to the use of water in Colorado independent of State interference.[240]

Failure to raise the issue of the nature of Colorado's police regulation interest in the "water" within that State is one of the most grave deficiencies in the Justice Department's conduct of the entire proceeding from the lowest to the Highest courts. Attendant upon that total inadequacy of presentation is the grave Constitutional questions next to be considered.

[CXIII] (3) *Congress did not—could not—delegate its Constitutional Trust obligation to American Indians to States by 43 U.S.C. 666*

Congress, as stated, did not subject American Indian rights to the use of water by its enactment of 43 U.S.C. 666, to State control.[241] As the President in his July 8, 1970, message to Congress recognized, those rights to the use of water are protected by the Trust responsibility this Nation owes to the Indians.[242] Indeed, Congress could not abrogate this Nation's Trust obligation respecting Indian rights to the use of water for that obligation was delegated to and accepted by the Nation under the Constitution.[243] It is, of course, an elemental proposition of law that Congress cannot delegate the Constitutional powers or responsibilities.[244] That Congress did not purport to do so is clear from the explicit language of 43 U.S.C. 666.

Omitting reference to the Constitutional prohibition against the delegation of Trust obligation by the Congress, is but one aspect of the Justice Department's grave damage to the Indians by that Department's failure to bring to the Court's attention the Indian rights in the Colorado River and its tributaries while relying almost exclusively upon Indian law relative to the issues before the Court. Any attempt to assert that 43 U.S.C. 666 is applicable to the Indian rights [CXIV] to the use of water must be barred by the principle that the Congress did not intend to and could not delegate to the States the power to exercise jurisdiction over Indian rights.

(4) *Failure by Justice Department to raise most elemental proposition of statutory construction—43 U.S.C. 666 does not and could not have retrospective effect subjecting the Nation's or the Indians' rights to decrees to which it was not and could not be made a party*

Congress did not intend 43 U.S.C. 666 to have retrospective effect. Yet the entire course of conduct by the Justice Department in the proceeding in the Supreme Court and those in the courts below, proceeds in disregard of those basic tenets of the law—tenets of the law which are of necessity controlling.

Nature of the *Eagle River Adjudication* and *Water Division No. 5 Adjudication* as they pertain to the rights of the American Indians and the Nation as a whole in the main stream of the Colorado River and its tributaries, has not been clearly stated. Facts respecting those proceedings are vital to a correct evaluation of the course that has been followed by the Justice Department in them. Regarding the *Eagle River Adjudication*, Colorado's Supreme Court said this: "There have been a number of previous adjudications in this water district. The decree in the original adjudication was entered eighty years ago and the last one was entered on February 21, 1966. The United States was not a party in any of these earlier proceedings." [245]

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[239] See above, page 37. Utah's Supreme Court stated that elemental proposition very well in these terms: "Water flowing in a natural stream or in a ditch is not subject to ownership so far as the corpus of the water is concerned." Bear Lake & River Waterworks Irr. Co. v. Ogden, 8 Utah 494, 33 Pac. 135 (1893).

See 1 Wiel, Water Rights in the Western States, 3d ed. Secs. 18–19.

[240] See above, page 86—"Immunity of American Indian rights to the use of water from State police regulation, jurisdiction, adjudication, control and administration, has not been waived by the Congress under 43 U.S.C. 666 or otherwise.

[241] See above, page 86, et seq.

[242] See above, pages 63 et seq.

[243] Se Constitution of the United States 1787, Art. I, Sec. 8, Cl. 3; See Federal Encroachment on Indian Water Rights and the Impairment of Reservation Development, 91st Congress, 1st Session, * * * A Compendium of Papers * * * Joint Economic Committee * * * Vol. 2, pages 477 et seq.

[244] See 79 L.Ed. 476; Schecter Corp. v. United States, 295 U.S. 495, 537 (1934); Field v. Clark, 143 U.S. 649, 692 (1891); Butte City Water Company v. Baker, 196 U.S. 119, 126 (1905); Knickerbocker Ice Co. v. Stewart, 253 U.S. 149, 163, 164 (1919).

[245] Appendix, Page 12.

[CXV] Upshot of applying 43 U.S.C. 666 to decrees entered eighty years ago is to attempt an erroneous interpretation of that statute as being retrospective in operation. That attempt to apply the law to Colorado's state decree dating back eighty years must be contemplated in the light of these additional rulings by the Colorado Court:

> "We are not determining whether the United States has reserved water rights in connection with lands withdrawn subsequent to August 1, 1876, the date of Colorado's admission to the Union; nor, if so, whether these rights have priority over previously adjudicated rights." [246]

Continuing, the Colorado Court stated in regard to its determination that 43 U.S.C. 666 subverted the Nation's rights to decrees eighty years old:

> "* * * These questions properly should be decided after the United States presents its specific claims for adjudication and the issues of fact and law are clearly drawn." [247]

Later in its decision the Supreme Court of Colorado ruled, in a purely advisory feature of its opinion—advisory because the issues were not before it as revealed by the last quoted excerpts:

> "The fact that our statutes do not provide for the adjudication of the rights of the United States with priorities prior to the date of later decrees does not mean that our district courts in a water adjudication cannot determine the rights of the United States in relation to decreed water rights. * * * We hold that the Constitution, without the need of any statute, grants jurisdiction of the subject matter under consideration." [248]

[CXVI] Substance of that statement—albeit advisory and in total error—is that 43 U.S.C. 666 subjected the United States to proceedings, facts and law, which were tried upwards to one hundred years ago. That the United States would have no right to cross-examine witnesses a long time dead; to appeal from judicial errors which probably cried out for reversal, demonstrates the fallacy of the advisory opinion. Let this fact be emphasized: Congress did not contemplate that type of confiscation of the Nation's rights to the use of water when it enacted 43 U.S.C. 666.

Let this fact be likewise emphasized: American Indians in the Colorado River Basin cannot survive that type of conduct in the proceedings within the State of Colorado for, as reviewed, Colorado constitutes their primary source of water supply.[249]

From the express language of 43 U.S.C. 666 [250] it is evident that it is prospective not retroactive, in its operation. It is, of course, elementary that retrospective statutes exist only when Congress expressly declares that type of operation of them, and they cannot then invade property rights, particularly those of the American Indians whose rights are held in trust by the United States.

It is a basic precept of the law governing statutory construction that enactments will not be accorded retroactive application unless there has been a clear mandate of the legislative body directing the law be applied in that manner. A review of the, express language of 43 U.S.C. 666 discloses no such mandate from Congress.

> [CXVII] "Legislative enactments will not be construed as retrospective in their operation, even when permissible, unless it is clear they were intended to do so. This rule ought especially to be adhered to when such a construction will alter the preexisting situation of parties or will affect or interfere with their antecedent rights. It is founded on the soundest principles of public policy, and its reason is manifest." [251]

Colorado's Supreme Court has stated:

> "One of the contentions of the city is that this [law] cannot have a retroactive effect unless there is an express declaration in the statutes so providing. We think that contention is sound. * * * It is a fundamental rule, supported by numerous decisions, that statutes are not to be construed as having a retroactive effect unless the purpose and intention of the legislature to give them a retroactive effect clearly appears." [252]

Adopting virtually the same language as the State court, the Supreme Court of the United States recently declared; "Retroactivity, even where permissible, is not favored, except upon the clearest mandate." [253] That Court has likewise stated: "Construction is not legislation and must avoid 'that retrospective expansion of meaning which properly deserves the stigma of judicial legislation.' " [254]

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[246] Appendix, Pages 12, 15.

[247] Appendix, Pages 12, 15.

[248] Appendix, Pages 12, 17.

[249] See above, page 23.

[250] Appendix, Page 1.

[251] United States v. McPhee, 51 Colo. 425, 431 ; 118 Pac. 996 (1911).

[252] Denver v. Armstrong, 105 Colo. 290, 292 ; 97 P.2d 448 (1939).

[253] Claridge Apartments Co. v. Commissioner, 323 U.S. 141, 164 (1944).

Citing the Colorado Constitution, Sutherland on *Statutory Construction* says this: "Because of the intuitive belief that there is something inherently bad in retroactive legislation, some states [including Colorado] have adopted express constitutional provisions against retroactive laws." [255]

[CXVIII] Dissipation of invaluable rights to the use of water either those of the American Indians held in trust for them, or those of the Nation as a whole, was not intended by the Congress when it enacted 43 U.S.C. 666. Compliance with Colorado law would inevitably have that effect. As stated above, adjudication decrees were entered eighty years ago in the *Eagle River Adjudication*. That fact is, of course, equally applicable to the decrees in the *Water Division No. 5 Adjudication* which embraces the former adjudication.[256] Most recent decree on the Eagle River, as Colorado's Supreme Court stated, was February 16, 1966.[257] Under Colorado law the American Indians, if 43 U.S.C. 666 is applicable to them—which it is not—would lose priorities antecedent to one day subsequent to February 16, 1966—an irreparable damage to every Indian dependent upon waters arising in Colorado.[258]

Loss of priority in a river so grievously over-appropriated and contaminated as the Colorado, is tantamount to losing irreplaceable property rights. Priorities have long been recognized by Colorado's Supreme Court as invaluable property interests: "* * * this court has repeatedly held that priorities of right to the use of water are property rights. Such is the settled doctrine in this state. * * *

> Property rights in water consist not alone in the amount of the appropriation, but also in the priority of the appropriation. It often happens that the chief value of an appropriation consists in its priority over other appropriations from the same natural stream. Hence, to deprive a person of his priority is to deprive him of a most valuable property right; * * *." [259]

[CXIX] Emphasizing the sanctity of a priority to rights to the use of water the Colorado court stated: "*A priority if right to the use of water, being property, is protected by our constitution so that no person can be deprived of it without 'due process of law'* ".[260] (Emphasis supplied) underscoring the principle that the priority to which a right to the use of water is entitled, is property, the Supreme Court of Colorado has likewise stated:

> "It is elementary learning in Colorado that a water priority is a property right-not a mere revocable privilege; that it is not fixed appurtenance; that the right to change its place of use and the point of diversion is an inherent property right, not conferred by our remedial statute, but pre-existing as an incident of ownership, and always enforceable so long as the vested rights of others are not injuriously affected." [261]

The basic principles in regard to the real property nature of a priority to the use of water from a stream is adhered to throughout the arid and semiarid West.[262] A different rule would be suicidal where water is the very essence of life itself.[263]

Denial of the American Indians of their right to be heard before the Supreme Court in the *Eagle River Adjudication* and *Water Division No. 5 Adjudication*, in the light of their rights to the use of water within the State of Colorado, is tantamount to the destruction of the American Indians residing in the Colorado River Basin.[264]

[CXX] Failure of the Justice Department adequately and properly to represent the American Indians, indeed, all of the people of the Nation, in the above mentioned proceedings, in regard to (i) the clear import of the Colorado Constitution which only claims regulatory authority, not proprietary title, in the "water within its boundaries"; (ii) the prospective, not retrospective, nature of 43 U.S.C. 666, whatever other force it may have, is, as stated, simply reflective of the "inherent conflict of interest" within that Department so severely condemned by the President in his July 8, 1970, Message to Congress. Conduct—offers to bargain—by the Justice Department in the Supreme Court and the courts below, in regard to the meaning and application of 43 U.S.C. 666 likewise falls far short of the President's demand that the Justice Department representing the Trustee United States, has the "legal obligation to advance the interests" of the American Indians "without reservation and with the highest degree of diligence and skill." [265] That conduct will now be reviewed.

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[254] Addison v. Holly Hill Fruit Products, Inc., 322 U.S. 607, 618 (1944).

[255] 2 Sutherland, Statutory Construction, 3rd ed., Horack, Sec. 2204, p. 119, citing Colorado Constitution, Art. II, Sec. 11: Ex post facto laws.—No ex post facto law, nor law impairing the obligation of contracts, *or retrospective in its operation*, or making any irrevocable grant of special privileges, franchises or immunities, shall be passed by the general assembly.

[256] See above, pages 1 et seq.

[257] Appendix, Page 12.

[258] See 11 Colo. Rev. Stat. 1963, Perm. Cum. Supp. 1969, Sec. 148–21–22. Substance of that law was applicable prior to the 1969 amendment—See Appendix, pages 76–77.

[259] Nichols v. McIntosh, 19 Colo. 22; 34 Pac. 278, 280 (1893).

[260] Nichols v. McIntosh, 19 Colo. 22; 34 Pac. 278, 280 (1893).

[261] Brighton Ditch Co., et al. v. City of Englewood, 124 Colo. 366, 237 P.2d 116, 120 (1951).

[262] Hutchins, The California Law of Water Rights, "Property Characteristic", pp. 120 et. seq.

[263] Vonberg v. Farmers Irr. Dist., 132 Nebr. 12; 270 N.W. 835 (1937); Whitmore v. Murray City, 107 Utah 445; 154 P.2d 748, 751 (1944); For summary on the subject see 1 Wiel, Water Rights in the Western States, 3d ed., Chap. 14, pp. 307 et seq.

[264] See above, pp. 37 et seq.; pp. 52 et seq.

(5) *Failure of Justice Department to fulfill obligations by (i) offers to appear as plaintiff in State court proceedings asserting minuscule claims; (ii) to subvert on the basis of State lines, the Nation's rights to the use of water* [266]

Seeking to placate the powerful forces which desire to take from the people of the United States rights to the use of water in Colorado, the Justice Department has offered to bargain with those forces.[267]

[CXXI] Disaster will be visited upon the American Indians in the Colorado River Basin by the voluntary submission of the Nation's rights to the police regulations of Colorado in much the same degree as they will by that Department's failure properly or adequately to represent the Nation under 43 U.S.C. 666, all as reviewed above. Reject out of hand any assertion by the Justice Department that American Indian rights are not affected; subsequently may be adjudicated in other, later proceedings. Utah's Supreme Court contemptuously said this to the Justice Department's attempts to piecemeal Federally claimed rights, some of which were before it: "The United States accepts the decree as entered, but urges that in addition to the specific water rights it was awarded, the court should have recognized additional but unspecified water rights which may exist by virtue of Federal withdrawal of public lands and which the government may require for use in the future."

* * * * * * *

> "*It is thus magnanimously conceded that private individuals have acquired their water rights adjudicated in this proceeding, but it is contended that they must always be inferior and subordinate to rights which the government might decide at a later time to assert.*

* * * * * * *

> "*It is our opinion that the United States, having become a party seeking adjudication of its rights in this proceeding, wherein the court had jurisdiction of the subject matter and the parties, is bound by the judgment to the same extent as any other part. * * **" [268] (Emphasis supplied.)

In simple terms, the Justice Department is now and for many years, through failure properly to represent the Nation in [CXXII] litigation involving rights to the use of water—not only the rights of the American Indians—is causing the people of this country to lose invaluable, irreplaceable rights in the streams within its forest, park and recreational areas. This matter has previously been emphasized. In a memorandum dated January 28, 1964, entitled "Abridgment and Loss of Indians' Winters Doctrine Rights and Those of the Nation as a Whole" there was directed to the then Assistant Attorney General of the Lands Division, Department of Justice, a full review of the failure of the Justice Department adequately and properly to represent the United States in litigation involving the Indians' and the Nation's rights to the use of water. The principles reviewed there are equally applicable to the present phase of this consideration.

Voluntarily to submit to the police regulations under the circumstances offered—indeed, under any circumstances—is tantamount, as the Utah court explicitly ruled, to an outright abandonment of all rights including American Indian rights which are not asserted.

Bargaining on the basis that the Justice Department would submit, under 43 U.S.C. 666, to State control on a statewide basis, is clearly violative of the express language of part (1) of the Act, and the cases interpreting that Act.[269] Under

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[265] Congressional Record, Senate, July 9, 1970, pp. S10894, S10896, Sec. 8, Indian Trust Counsel Authority.

[266] See above, pages 6 et seq.

[267] See above, page 8, paragraph (iii) ; Appendix, Pages 10–11.

[268] In re Green River Adjudication v. United States of America, 17 Utah 2d 50 ; 404 P.2d 251, 252 (1965).

[269] See above, page 8, paragraph (iv) ; See pages 66 et seq.

no circumstances should the American Indians agree that the Colorado River, short of water and polluted, should be segmented by the laws of the seven Colorado River Basin States. There is no more rapid means of perpetrating another—perhaps last—outrage against the American Indians in that Basin and throughout Western United States.

[CXXIII] DISMISSAL BY THE SUPREME COURT OF THE EAGLE RIVER ADJUDICATION AND THE WATER DIVISION NO. 5 ADJUDICATION SHOULD ENSUE—PRINCIPAL PARTIES ALREADY BOUND BY A FEDERAL DISTRICT COURT DECREE—THE UNITED STATES IS NOT A NECESSARY PARTY

(a) *Failure of Justice Department to bring to the Supreme Court's attention a Federal Decree encompassing all of the drainage area of the main stream of the Colorado River in the State of Colorado*[270]

Incredible aspect of the Justice Department's conduct in the Supreme Court and in the Colorado courts is its failure to refer to the Final Decree and Final Judgment dated October 12, 1955, by the United States District Court for the District of Colorado. Parties [CXXIV] to that Final Decree are most significant in the light of the present proceedings before the Supreme Court. As will be observed, they include: The United States of America v. [1] Respondent in Cases No. 87 and 812, The Colorado River Water Conservation District; [2] Respondent in Case No. 87, The City and County of Denver, a Municipal Corporation. All-encompassing nature of that Final Decree in regard to the main stream drainage area of the Colorado River can be ascertained from a review of Senate Document **No. 80, 75th Congress, which that Decree was entered to enforce. Plate II refers to the flow requirements under that Senate Document and Final Decree, at Shoshone and at the head of Grand Valley. If the Justice Department has abandoned that Final Decree against the Respondents, so important to the entire drainage area of the Colorado River, the Supreme Court of the United States must be advised. If the Justice Department has not abandoned that Final Decree, then it behooves that Department to inform the Supreme Court of it, and how it can be ignored in the two Adjudications under review.**

Included with specificity in that Federal Court Decree are rights to the use of water of the Respondent City and County of Denver and whatever may be the interest of Respondent Colorado River Water Conservation District. It pertained with specificity and with particularity to rights to the use of water in Colorado Water Districts No. 36 and 51. Yet the Justice Department recites this to the Supreme Court:[271]

> [CXXV] "The United States, however, has recently been served in three additional supplemental adjudications:
>
> (1) W.D. 36, Dist. Ct., Summit Co., Civil No. 2371;
> (2) W.D. 51, Dist. Ct., Grand Co., Civil No. 1768; and
> (3) W.D. 52, Dist. Ct., Eagle Co., Civil No. 1548."

The Supreme Court must be advised as to the Justice Department's position respecting the Federally decreed rights of the United States as they pertain to those Districts. Does the Justice Department intend to subject part of the rights to the State court as a plaintiff as it has suggested, and have the vast and all-inclusive rights embraced in the 1955 Final Decree administered under the Federal Court's jurisdiction? Total confusion is no predicate for presenting to this Nation's Highest Court the all-important question of the applicability of 43 U.S.C.

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[270] **Civil Nos. 2782, 5016, 5017. In the United States District Court for the District of Columbia.**

Civil No. 2782.—The United States of America, Plaintiff v. Northern Colorado Water Conservancy District, a Quasi-Municipal Corporation of the State of Colorado; The Colorado River Water Conservation District, a Quasi-Municipal Corporation of the State of Colorado; The Palisade Irrigation District, a Quasi-Municipal Corporation of the State of Colorado; The City and County of Denver, a Municipal Corporation; The City of Englewood, a Municipal Corporation; The City of Colorado Springs, a Municipal Corporation; The Public Service Company of Colorado, a Corporation; The South Platte Water Users Association, a Public Corporation of the State of Colorado; Defendants.

Civil No. 5016.—Petitioners: Colorado River Water Conservation District, The Grand Valley Water Users Association, The Orchard Mesa Irrigation District, Palisade Irrigation District, and Grand Valley Irrigation Company: In the Matter of the Adjudication of Priorities of Water Rights in Water District No. 36 for Purposes of Irrigation.

Civil No. 5017.—Petitioners: Colorado River Water Conservation District, The Grand Valley Water Users Association, The Orchard Mesa Irrigation District, Palisade Irrigation District, and Grand Valley Irrigation Company; In the Matter of the Adjudication of Priorities of Water Rights in Water District No. 36 for Purposes Other Than Irrigation.

Amendments to Judgment and Decree, if any.

[271] **Appendix, p. 11.**

666 as it pertains to the Colorado River and its tributaries within the State of Colorado. Yet that is the precise nature of the proceedings based upon the existing Federal decree binding on the principal Respondents before the Supreme Court.

Bizarre nature of the present status of the issues, in the light of the 1955 Federal Final Decree encompassing Water Division No. 5, including the *Eagle River Adjudication*, cannot be resolved from the record before that Court. Yet it is imperative that those issues be resolved if a total travesty is to be avoided. Any other course is unfitting for all parties concerned. For reasons reviewed in depth, the American Indians in the Colorado River Basin have a most vital and basic interest as their rights are gravely imperiled due to [CXXVI] the fact that a large proportion of the entire flow of the Colorado River is involved.[272]

(1) *Odd course adopted by Respondents*

Respondent The Colorado River Water Conservation District is the only Respondent to file a brief in the *Water Division No. 5 Adjudication.*[273] That is odd because as reviewed above, *Water Division No. 5* includes the Eagle River. It is odd but in keeping with the general course of the proceedings. Does Denver contend there is a conflict with the United States under the old Colorado law—the *Eagle River Adjudication*—but no conflict with the United States under the new law—the *Water Division No. 5 Adjudication;* which includes the *Eagle River Adjudication?* How can the City and County of Denver, if it has a true interest in the *Eagle River Adjudication*, refrain from participating in *Water Division No. 5 Adjudication?* Perhaps the explanation is contained in the vagaries of the alleged claims of the City and County of Denver as spelled out in this footnote in the Respondent's brief in the *Eagle River Adjudication:*

> "The Colorado River Water Conservation District appeared on behalf of and in support of the action of the respondent court denying the motion of the United States to dismiss. Other respondents below were parties in the adjudication proceeding. The City and County of Denver is the largest single user of water in the State and a substantial part of its water supply will come from the Eagle River system. The Central Colorado Water Conservancy District is a claimant of water in that area and New Jersey Zinc Company is also an owner, user and claimant of water in the area. All are affected by the rights the United States indicates it would claim." [274]

[CXXVII] There is no assertion there of a conflict between the National Government and any of the Respondents. It is, indeed, denied that there is a conflict or a justiciable issue before the Supreme Court, if the true facts were fully disclosed.

(b) *The United States is not a necessary party*

As reviewed above, the United States, based on the record, is not a necessary party to the *Adjudications*—43 U.S.C. 666 explicitly requires that, prior to joinder, the United States must be a necessary party.[275] Inquiry in that connection must be raised as to the nature of the claim of the Colorado River Water Conservation District. What are its powers? What are its claims? Are they adverse to the United States? Similarly, there appears to be no basis whatever for a claim on behalf of the Respondent Central Colorado Water Conservancy District. Again, from the record, there is no basis for determining what that claim may be. That conclusion is manifest from the immediately preceding excerpt from Respondent's *Eagle River Adjudication* brief. As emphasized, only one of the Respondents filed a brief in *Water Division No. 5 Adjudication.* These inquiries must be responded to for there probably have never been more important issues before the Supreme Court in regard to Western water rights. Absent proof from the record that the United States is a necessary party, demand must be made for dismissal of the proceedings.

WILLIAM H. VEEDER,
Water Conservation and
Utilization Specialist.

MARCH 23, 1971.

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[272] See above, pp. 23 et seq.
[273] Appendix, pp. 86 et seq.
[274] Appendix, Page 25, footnote 5.
[275] See above, page 2.

CONFLICTS OF INTEREST IN PROCEEDINGS BEFORE THE SUPREME COURT OF THE UNITED STATES—A PREFACE TO DISASTER FOR THE AMERICAN INDIAN PEOPLE

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[App. I] No. 1178

[Now No. 87]

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1969

[Now October Term, 1970]

UNITED STATES, PETITIONER

v.

THE DISTRICT COURT IN AND FOR THE COUNTY OF EAGLE AND STATE OF COLORADO

Petition For A Writ Of Certiorari To The Supreme Court Of The State Of Colorado

* * * * * * *

QUESTIONS PRESENTED

1. Whether in enacting 43 U.S.C. 666 Congress intended to consent to suits against the United States for adjudication of its reserved water rights not predicated on State law.
2. Whether the congressional consent to suits against the United States "for adjudication of rights to the use of water of a river system" extends to a supplemental adjudication proceeding in one of some 70 water districts in Colorado which encompasses only a tributary of the Colorado River.

STATUTE INVOLVED

43 U.S.C. 666 (Act of July 10, 1952, 66 Stat. 560) provides:

> Suits for adjudication of water rights. (a) Joinder of United States as defendant; costs—
>
> Consent is given to join the United States as a defendant in any suit (1) for the adjudication of rights to the use of water of a river system or other source, or (2) for the administration of such rights, where it appears that the United States is the owner of or is in the process of acquiring water rights by appropriation under State law, by purchase, by exchange, or otherwise, and the United States is a necessary [App. II] party to such suit. The United States, when a party to any such suit, shall (1) be deemed to have waived any right to plead that the State laws are inapplicable or that the United States is not amenable thereto by reason of its sovereignty, and (2) shall be subject to the judgments,

orders, and decrees of the court having jurisdiction, and may obtain review thereof in the same manner and to the same extent as a private individual under like circumstances: *Provided*, That no judgment for costs shall be entered against the United States in any such suit.

STATEMENT

The United States was joined as a defendant to a supplemental water adjudication proceeding for Water District 37 in the Eagle County District Court in Colorado. Water District 37 is one of 70 water districts in Colorado, and encompasses "all lands lying in the state of Colorado irrigated by water taken from the Eagle river and its tributaries" (Colo. Rev. Stat., 148-13-38 (1963)). The Eagle River is a tributary of the Colorado River.

The United States claims two types of water rights in Water District 37: *appropriative* rights acquired pursuant to State law, and *reserved* rights based on federal law, resulting principally from withdrawals of land from the public domain. Reserved rights have been defined by this Court as the entitlement of the United States to use as much water from sources on lands withdrawn from the public domain as is necessary to fulfill the purposes for which the lands were withdrawn, subject only to water rights vested as of the date of the withdrawal. *Arizona* v. *California*, 373 U.S. 546, 595–601. Most of the reserved rights claimed by the United States in Water District 37 are for the White River National Forest, which was withdrawn from the public domain by Presidential Proclamation on August 25, 1905 (34 Stat. 3144).

In response to its joinder as a defendant in the State court proceeding,[2] the United States moved for dismissal as to it, on the ground of lack of jurisdiction. When that motion was denied by the district court, the United States applied to the Colorado Supreme Court for a writ of prohibition. The first ground of that application was that 43 U.S.C. 666 consents only to a suit wherein the rights of all water users within a river system are before the court, and that a supplemental adjudication proceeding in Water District 37 is not such a suit because Water District 37 does not embrace an entire river system. Moreover, the United States contended that, since the [App. III] jurisdiction of Colorado district courts is limited by State law to the adjudication of water rights arising under Colorado law (appropriative rights), the district court could not adjudicate water rights of the United States based on reservations of the public domain (App. 22).[3]

The Colorado Supreme Court in an *en banc* opinion concluded that the United States was subject to the jurisdiction of the district court, and accordingly discharged its rule to show cause. The grounds for its decision were that (1) the adjudication proceeding in Water District 37 is an "adjudication of rights to the use of water of a river system" within the meaning of 43 U.S.C. 666; (2) the United States has consented, by Section 666, to adjudication of its reserved rights; and (3) the Colorado district courts have plenary jurisdiction, independent of State statute, to adjudicate rights of the United States based both on appropriations under State law and on withdrawals from the public domain, and to bring all parties necessary to such an adjudication before the Court (App. 31, 33, 45). The court reserved decision on whether the United States was bound by prior adjudications in Water District 37 to which it was not a party (App. 40).

While the court did not expressly decide that the United States has no reserved water rights in Colorado,[4] the thrust of its opinion is that the United States has no water rights in Colorado except those arising under State law. The court said the cases cited by the United States in support of its claimed reserved rights (*Arizona* v. *California*, 373 U.S. 546; *Winters* v. *United States*, 207 U.S. 564; *United States* v. *Rio Grande Irrigation Co.*, 174 U.S. 690; and *Federal Power Commission* v. *Oregon*, 349 U.S. 435) were not determinative (App. 37–40). It suggested that a decision that the United States has reserved rights in Colorado would require the overruling of *Stockman* v. *Leddy*, 55 Colo. 24, where it had said that the United States, by admitting Colorado into the Union with a provision in its constitution declaring unappropriated waters of streams within its borders to be the property of, and subject to appropriation by, the people of Colorado,[5] had lost any right to assert thereafter water rights in Colorado except those acquired by appropriation pursuant to State law (App. 40).

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[2] This footnote omitted here.
[3] This footnote omitted here.
[4] This footnote omitted here.
[5] This footnote omitted here.

* * * * * * *

REASONS FOR GRANTING THE WRIT

The decision below poses substantial hazards to the effective utilization of federal lands in the West. The net effect [App. IV] of that decision may well be to deprive the United States of valuable water rights for use in connection with the development of the public domain. The United States owns approximately 731,000,000 acres of land in the 17 contiguous western States and Alaska. U.S. Dept. of Interior, *Public Land Statistics*, p. 11 (1966). Water is obviously essential to the utilization and administration of land in these arid and semi-arid States, as well as to a variety of other government projects and programs. In this regard, the United States depends both on water rights acquired pursuant to State law and on reserved rights based on withdrawals from the public domain. Until now the validity of the latter source has scarcely been open to question. See, *e.g.*, *Winters* v. *United States*, 207 U.S. 564, 577; *Arizona* v. *California*, 373 U.S. 546, 598, 601.

The decision below threatens the inviolability of the federal government's reserved water rights. Courts in other western States may well be guided by the example set in this regard by the Colorado courts. If, as the decision below portends, the rights of the United States to use the water on its public lands which have been withdrawn for various purposes are to be subjected to the vagaries of inconsistent State laws, the implications for any public-oriented program of conservation and land development are indeed serious. The magnitude of the problem is indicated by the fact that about 443,000,000 acres have been withdrawn from the public domain for use as Indian reservations, national parks, national forests, national recreation areas, national monuments, etc.[7] It is not an exaggeration to suggest that the decision below raises serious questions about the nature and scope of the federal government's water rights on all these public lands.

The appropriation system of water law followed by Colorado is prevalent in the western States.[8] It is fundamental to this system of water law that the rights of users of water from the same source are carefully described as to priorities, amounts and uses in adjudication proceedings. The only statute by which the United States has given its consent to be made a party to such adjudication proceedings is 43 U.S.C. 666. For that reason, the reach of the consent to suit given by the United States in this statute, which has never been definitively construed by this Court on this point, is of great importance. This is particularly so at a time when increasing demands on the Nation's limited water supplies by a rapidly expanding population make it certain that the problems arising under the statute, such as those involved in this litigation will be recurring ones.

* * * * * * *

[App. V] The appropriation system of water law, upon which the laws of the western States are based, is essentially different from the concept of reserved water rights. Under Colorado law, to "adjudicate" means essentially to fix the amount and priority date of a water right by determining when, and in what quantity, water was diverted and applied to a beneficial use (Colo. Rev. Stat., 148–9–11, 13 (1963)). Such water rights are subject to loss through abandonment, and thus have characteristics that are incompatible with reserved rights, which arise automatically when lands are withdrawn from the public domain, have priority as of the dates of such withdrawals, and apply to future as well as existing uses. The Colorado Supreme Court's suggestion that the Colorado constitution precludes ownership by the United States of reserved rights in Colorado[11] is illustrative of the potential difficulties. But, as we have already noted, the United States unquestionably has the right to use as much water from sources on lands withdrawn from the public domain as is necessary to fulfill the purposes for which the lands were withdrawn, subject only to water rights vested as of the date of withdrawal, and the suggestion thus conflicts with decisions of this Court. *Arizona* v. *California*, *supra*, 373 U.S. at 595–601; *Winters* v. *United*

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[7] This footnote omitted here.
[8] This footnote omitted here.
[11] This footnote omitted here.

States, supra, 207 U.S. 564; see also *United States* v. *Ahtanum Irrigation District*, 236 F.2d 321 (C.A. 9); *Burley* v. *United States*, 179 Fed. 1, 12–13 (C.A. 9).[12]

* * * * * * *

2. Similarly, the court below erred in holding that the United States may be joined under 43 U.S.C. 666 in a State court proceeding for the adjudication of water rights in one of Colorado's 70 water districts. The proceeding relating to Water District 37 is not one "for the adjudication of rights to the use of water of a river system or other source" within the meaning of Section 666. The courts have in general required that all parties claiming rights to the use of water of a river system or other source be before the court, and that the suit be one for an *inter sese* determination of all claimed rights. In *Dugan* v. *Rank*, 372 U.S. 609, 618, this Court spoke of "a *general* adjudication of 'all of the rights of various owners on a given stream.'" And in *Miller* v. *Jennings*, 243 F.2d 157, 159 (C.A. 5), the court said:

> The United States has not given its consent to be joined as a defendant in every suit involving water rights. It may be made a party only in suits "for the adjudication of rights to the use of water of a river **[App. VI]** system or other source." There can be an adjudication of rights with respect to the upper Ro Grande only in a proceeding where all persons who have rights are befort the tribunal. * ** * [13]

Assuming here that the proceeding in Water District 37 is for an *inter sese* adjudication of all water rights claimed in Water District 37, and that the district court can bring all necessary parties before it, the question remains whether Water District 37 includes a "river system" within the meaning of the statute. We believe it does not. Water District 37 is only one of 70 water districts in Colorado (see note 15, *infrfa*). And the United States has been joined in similar proceedings in Water Districts 36, 51, and 52 in Colorado,[14] as well as in other States, including Utah, Idaho, New Mexico and Washington. More such suits can be expected to follow if the Colorado Supreme Court's decision is allowed to stand. Certainly Congress did not intend the United States to be burdened with the defense of innumerable suits to adjudicate rights as to only small portions of recognizable river systems. Since the United States has water rights throughout entire river systems, such as the Colorado River, it is more likely to be adversely affected by piecemeal adjudications than private parties whose interests are not so widespread. Congress obviously had this in mind when it enacted 43 U.S.C. 666, and that provision should be construed accordingly.[15]

* * * * * * *

[App. VII] APPENDIX

SUPREME COURT OF THE UNITED STATES

IN THE DISTRICT COURT IN AND FOR THE COUNTY OF EAGLE AND STATE OF COLORADO

THE COLORADO RIVER WATER CONSERVATION DISTRICT, PETITIONER

NOTICE OF APPLICATION FOR SUPPLEMENTAL ADJUDICATION OF WATER RIGHTS

* * * * * * *

All persons, associations and corporations interested in the priority of rights to the use of water for beneficial purposes in Water District No. 37.

You are hereby notified that the above named Petitioner has filed a petition, * * *

* * * * * * *

* * * this notice shall not require any owner or claimant of a water right which has already been adjudicated to submit such water right in this supplemental adjudication.

You are further notified that in said petition, filed as aforesaid, the petitioner asked for an adjudication of the following amounts of water as set opposite each of its claims herein, to-wit:

(a) The Wolcott Reservoir—65,975 acre feet of water, including 810 acre feet of dead storage;

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[12] This footnote omitted here.
[13] This footnote omitted here.
[14] This footnote omitted here.
[15] This footnote omitted here.

(b) Wolcott Pumping Pipeline—500 cubic feet of water per second of time; all dating back to April 27, 1966 for municipal, industrial, domestic, irrigation, stock watering, electric power generation, recreational and other beneficial uses and purposes.

(c) Nolan Creek Feeder Canal—38.5 cubic feet of water per second of time.

(d) Hat Creek Feeder Canal—27.0 cubic feet of water per second of time. all dating back to June 10, 1966 for irrigation, domestic, municipal, industrial and other beneficial uses and purposes;

* * * * * * *

Witness my hand and the seal of said Court this 3rd Day of October, 1967.

* * * * * * *

[App. VIII] IN THE MATTER OF THE ADJUDICATION OF PRIORITY RIGHTS TO THE USE OF WATER FOR IRRIGATION AND OTHER BENEFICIAL PURPOSES IN WATER DISTRICT NO. 37 IN THE STATE OF COLORADO, THE COLORADO RIVER WATER CONSERVATION DISTRICT, PETITIONER

MOTION TO DISMISS THE UNITED STATES FOR LACK OF JURISDICTION

The United States moves this Court to dismiss the United States from the above-captioned action for lack of jurisdiction for the reasons set forth in the accompanying Memorandum of Points and Authorities.

* * * * * * *

MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF MOTION TO DISMISS THE UNITED STATES FOR LACK OF JURISDICTION

* * * * * * *

V. FORMER ADJUDICATIONS & RIGHTS OF THE UNITED STATES IN WATER DISTRICT NO. 37

The United States claims water rights in Water District 37 which have never been the subject of an adjudication proceeding. These rights are under the administration of the Department of Agriculture. These rights claimed by the United States are rights with a date of reservation earlier than priorities granted in previous adjudications in Water District No. 37. To be specific:

The United States will claim those rights to use the waters within Colorado Water District 37 (primarily the Eagle River and its tributaries) by reason of the withdrawal of public lands within Water District 37 and the reservation thereof as National Forest lands. Said withdrawal was made by Presidential Proclamation of August 25, 1905 (34 Stat. 3144), and the United States claims those waters that it may now or in the future require for the purpose of said withdrawal with a priority of August 25, 1905.

In addition to our general reserved right, the United States will claim various specific uses, as follows:

(a) 39 specific uses upon the above said withdrawn lands for which the United States has made filings with the State Engineer. The dates of these filings run from 5/18/1939 to 3/1/1965. The United States will, however, claim the date of reservation, 8/25/1905.

[App. IX] (b) 185 specific uses upon the above said withdrawn lands for which the United States has made no filing with the State Engineer. Of the uses, 68 are current uses and 117 are foreseeable uses. The United States will claim the date of reservation, 8/25/1905.

(c) 10 C.F.S. for the Minturn Ranger Station Ditch, diverted from the Eagle River at a point on the right bank of the river whence the northwest corner of the SW1/4 of Sec. 36, T. 5 S., R. 81 W., 6th P.M. bears S 87° 25′ W, a distance of 1982 feet. The date of appropriation is September 16, 1941. The water is used for irrigation, watering, and fire protection.

(d) 1 C.F.S. for Nelson Ditch diverted from the Eagle River at a point on the south bank of the river, whence the northwest corner of the SW1/4 of Sec. 36, T. 5 S., R. 81 W., 6th P.M. bears S 75° 31′W, a distance of 1337.1 feet. The date of appropriation is May 28, 1902. The water is used for irrigation and stock watering.

(e) Additional specific uses may be claimed. For example, at the moment the Department of Agriculture is investigating the general reserved right and six specific uses on an area acquired from the Department of Defense and known as Camp Hale. The reservation and priority dates have not been determined at this time.

* * * * * * *

SUPPLEMENT TO MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS THE UNITED STATES FOR LACK OF JURISDICTION

* * * It is the purpose of this supplement to indicate briefly the nature and date of certain additional rights claimed by the United States, but which were only reported to the Department of Justice in the past two weeks.

* * * * * * *

(3) The United States claims 19 rights to use springs and waterholes on lands managed by the Bureau of Land Management. In regard to these springs the United States claims a reservation date of April 17, 1926, based on an Executive Order issued that date entitled Public Water Reserve No. 107. In addition to the April 17, 1926, reservation date, the United States claims it has priority to use these springs under § 148–2–2, Colo. Rev. Stat. (1963). In the alternative, the United States will claim priorities at least as early as the early 1940's for most of the springs.

(4) The United States claims rights for approximately 75 additional uses on lands managed by the Bureau of Land Management for livestock, wildlife and recreation. These uses fall into two principal categories: (a) small reservoirs or retention dams; and (b) small diversions from both perennial and intermittent streams. The United States claims priorities in the 1940's, 1950's and 1960's for the reservoirs and retention dams. Information concerning the [App. X] priorities for the diversions has not yet been supplied to the Department of Justice. In addition, the United States may claim a reservation date for some of these rights.

* * * * * * *

No. ——

IN THE SUPREME COURT OF THE STATE OF COLORADO

THE UNITED STATES OF AMERICA v. THE DISTRICT COURT IN AND FOR THE COUNTY OF EAGLE AND STATE OF COLORADO AND THE JUDGE THEREOF, THE HONORABLE WILLIAM H. LUBY

APPLICATION FOR WRIT IN THE NATURE OF PROHIBITION

Comes now the United States of America * * * and Prays that an alternative Writ in the Nature of Prohibition issue out of this Court to the District Court in and for the County of Eagle and State of Colorado and to the Judge thereof, the Honorable William H. Luby, prohibiting said court and Judge from asserting jurisdiction over the United States, from adjudicating any water rights of the United States or from purporting to bind the United States in Civil Action No. 1529, captioned IN THE MATTER OF THE ADJUDICATION OF PRIORITY RIGHTS TO THE USE OF WATER FOR BENEFICIAL PURPOSES IN WATER DISTRICT NO. 37 IN THE STATE OF COLORADO (a supplemental adjudication in Water District No. 37 under section 148–9–7, Colo. Rev. Stat. (1963)), for the reason that said court and Judge are wholly without jurisdiction over the United States. The grounds for this application and the circumstances out of which it arose are as follows:

(1) On November 2, 1967, the Attorney General of the United States received by registered mail a copy of NOTICE OF APPLICATION FOR SUPPLEMENTAL ADJUDICATION OF WATER RIGHTS for Civil No. 1529, * * *

* * * * * * *

(11) At said hearing on August 20, said Judge ruled from the bench that the motion of the United States to dismiss be denied and the motion of Denver for supplemental notice be denied. Said Judge has set October 21, 1968, as the last date for filing statements of claim and October 28 as the date for taking evidence in said matter.

(12) The question of jurisdiction of the United States in 1529 is one of great importance. The United States is the owner [App. XI] of many water rights in the State of Colorado. By and large these rights have not been adjudicated under Colorado adjudication procedures (148–9–1, et seq., C.R.S. (1963)). The United

States, however, has recently been served in three additional supplemental adjudications:

(1) W.D. 36, Dist. Ct., Summit Co., Civil No. 2371;
(2) W.D. 51, Dist. Ct., Grand Co., Civil No. 1768; and
(3) W.D. 52, Dist. Ct., Eagle Co., Civil No. 1548.

The United States has filed motions to be dismissed from each of these adjudications, which motions are still pending. In addition, the United States has been informally advised by members of the Bar of Colorado that it may expect to be served in many more supplemental adjudications throughout Colorado. Thus it is clear that many citizens of the State of Colorado are attempting to bind the United States to proceedings to which it was not a party and to cut off and destroy the rights of the United States by the means of having the courts of Colorado assert purported jurisdiction over the United States in supplemental adjudications. This creates the need for a clear opinion from this tribunal upholding the immunity of the United States from suit.

It should be pointed out, of course, that if this Court were to find that this Application and its supporting brief misstate Colorado law and were to hold that the United States could adjudicate all of its rights in proceedings such as this and obtain the true priority date of its reserved and appropriative rights, most of the objections of the United States to these adjudications would be removed. While the United States could not, even then, be joined as a defendant under 43 U.S.C. sec. 666, for the reason that an entire river system would not be involved, the United States would be assured it could have its rights properly adjudicated if it chose to appear as plaintiff in a Colorado Water District adjudication. While no representation can be made at this time as to what the United States would do in any particular case, it can be represented that the Department of Justice would raise no general objection to appearances as plaintiff in appropriate cases under the supposed circumstances.

Wherefore, the Petitioner, the United States of America prays this Honorable Court:

1. To take original jurisdiction in the matters thus presented to it;
2. To issue an order commanding the respondent court and Judge to show cause why they, and each of them, should not be [App. XII] prohibited from asserting or attempting to assert jurisdiction over the United States in Civil No. 1529;
3. To issue an order prohibiting the respondents, said court and Judge, from asserting or attempting to assert jurisdiction over the United States in Civil No. 1529.

* * * * * * *

October 14, 1968

* * * * * * *

[— Colo. —; 458 P.2d 760]

THE UNITED STATES OF AMERICA, PETITIONER v. THE DISTRICT COURT IN AND FOR THE COUNTY OF EAGLE AND STATE OF COLORADO AND THE JUDGE THEREOF, THE HONORABLE HAROLD A. GRANT, RESPONDENTS

THE COLORADO RIVER WATER CONSERVATION DISTRICT, CITY AND COUNTY OF DENVER, ACTING BY AND THROUGH ITS BOARD OF WATER COMMISSIONERS, CENTRAL COLORADO WATER CONSERVANCY DISTRICT, AND THE NEW JERSEY ZINC COMPANY, INTERVENORS

ORIGINAL PROCEEDING

EN BANC

RULE DISCHARGED

[— Colo. —; 458 P.2d 760]

* * * * * * *

Mr. JUSTICE GROVES delivered the opinion of the Court

This is an original proceeding in this court wherein the United States has asked for a writ prohibiting the district court from asserting jurisdiction over it in a supplemental water adjudication under C.R.S. 1963, 148–9–7. We issued a rule to show cause why the relief requested should not be granted.

The proceeding is in Water District 37 of the State of Colorado, which embraces the Eagle River and its tributaries. The Eagle River is a tributary of the Colorado River and is non-navigable. There have been a number of previous adjudications in this water district. The decree in the original adjudication was entered eighty years ago and the last one was entered on February 21, 1966. The United States was not a party in any of these earlier proceedings.

[App. XIII] The current proceedings were commenced by the Colorado River Water Conservancy District and it sought to make the United States a party under 43 U.S.C. § 666 (known as the McCarran Amendment) [see *supra* this APPENDIX Pages 1 and 2] [458 P.2d 761–762]

* * * * * * *

The United States moved the district court for dismissal as to it by reason of lack of jurisdiction. This motion was denied by the Honorable William H. Luby, the judge of the court, who has since retired. We have concluded that the district court has jurisdiction over the United States in these proceedings and that the motion was properly denied.

The propositions asserted by the United States are based upon the solid foundation that: (1) the United States cannot be subjected to the jurisdiction of any court without the consent of Congress; and (2) the only statute adopted by the Congress consenting that the United States may be made a party to a water adjudication is the McCarran Amendment. * * * The Government's propositions are as follows:

> (1) The McCarran Amendment can be used only with respect to a general adjudication of a river system in which all rights of all users are before the court; and the present proceeding does not involve (a) a general adjudication, (b) an entire river system, nor (c) all water users in the district.
>
> (2) The United States has unadjudicated rights antedating the last adjudicated decree and the district court cannot give priorities to these rights prior to the date of the last adjudication.
>
> (3) The district court has jurisdiction only to adjudicate rights arising out of Colorado law and the United States claims rights arising otherwise. [458 P.2d 762]

* * * * * * *

IV

APPROACH TO THE ADJUDICATION OF WATER RIGHTS OF THE UNITED STATES

[458 P.2d 767]

The remainder of the propositions asserted by the Government (as outlined early in this opinion) might be characterized as follows:

[App. XIV] If the state court in Colorado has jurisdiction over the United States, how and why can it grant the relief the United States would desire with respect to its water rights? In oral argument counsel for the Government indicated if there were a satisfactory answer to that question, the United States might not be so loathe to submit itself to the jurisdiction of our state courts. He also gave the distinct impression that he would be most surprised if we produced a ruling which would overcome the trepidation of the Justice Department to see federal water rights under the state jurisdiction. Whether or not we mitigate the sovereign reluctance, we hold that under its plenary power a Colorado district court can make the relative rights of the United States a subject of its decree and can bring under its jurisdiction additional necessary parties in order to make such a decree fully valid, effective and enforceable. Before elaborating on this declaration, we deem it advisable to discuss some of the features and problems involved—or perhaps to be involved—in any decretory approach to the water rights of the United States in Colorado, which must be confronted some day whether in our state courts or in a federal forum.

In the district court the United States filed a memorandum supporting its motion to dismiss. It there made the following statement concerning its claims to the use of water:

[See *supra* this APPENDIX Pages 8 and 9]

* * * * * * *

V.

RESERVED RIGHTS

[458 P.2d 768]

The Government insists that our district courts have jurisdiction only to adjudicate rights under the doctrine of appropriation and, therefore, they do not have jurisdiction over the so-called reserved water of the United States. It advises us that such reversed rights are valid with priorities substantially antedating several of the supplementary decrees in Water District 37 under the authority of *Arizona* v. *California*, 373 U.S. 546, 83 S.Ct. 1468, 10 L.Ed. 2d 542; *Federal Power Commission* v. *Oregon*, 349 U.S. 435, 75 S.Ct. 832, 99 L.Ed. 1215; *Winters* v. *United States*, 207 U.S. 564, 28 S.Ct. 207, 52 L.Ed. 340; *United States* v. *Rio Grande Dam & Irrig. Co.*, 174 U.S. 690, 19 S.Ct. 770, 43 L.Ed. 1136

In contrast, counsel for the intervenor Central Colorado Water Conservancy District contend that the United States has no [App. XV] rights whatsoever except any that it might have acquired in the same manner as an individual. In support of this they cite Article XVI, §§ 5 and 6 of the Colorado constitution and *Stockman* v. *Leddy*, 55 Colo. 24, 129 P. 220. These sections were placed in the constitution at the time it was prepared under the enabling act of Congress. Section 5 and a portion of Section 6 read as follows:

> "Section 5. Water of streams public property.—The water of every natural stream, not heretofore appropriated, within the state of Colorado, is hereby declared to be the property of the public, and the same is dedicated to the use of the people of the state, subject to appropriation as hereinafter provided.
>
> "Section 6. Diverting unappropriated water—priority preferred uses.—The right to divert the unappropriated waters of any natural stream to beneficial uses shall never be denied. * * *"

* * * * * * *

Winters v. *United States*, *supra*, [458 P.2d 770] involved water for an Indian reservation reserved prior to the admission of Montana into the Union. It was argued that the subsequent admission of Montana into the Union "upon an equal footing with the original States" (25 Stat. 676) repealed the reservation of water. This argument was not accepted. We are not concerned here with water rights asserted by the United States prior to Colorado's admission into the Union.

The *United States* v. *Rio Grande Dam & Irrig. Co.*, *supra*, involved acts within the Territory of New Mexico prior to the time New Mexico became a state. It was there stated:

* * * * * * *

We are not determining whether the United States has reserved water rights in connection with lands withdrawn subsequent to August 1, 1876, the date of Colorado's admission to the Union; nor, if so, whether these rights have priority over previously adjudicated rights. These questions properly should be decided after the United States presents its specific claims for adjudication and the issues of fact and law are clearly drawn. We do say at this time that, except for *Stockman* v. *Leddy*, *supra*, we have not encountered any decision determinative as to whether the United States has reserved water rights in Colorado; and we postpone the consideration of whether *Stockman* is to be overruled, as perhaps it must be if the contentions of the United States as to its reserved water rights are found to be sound.

[App. XVI] VI

WATER APPROPRIATIONS OF THE UNITED STATES UNDER STATE LAW

[458 P. 2d 771]

* * * * * * *

* * * the Government * * * quotes from *Arizona* v. *California*, 298 U.S. 558, 56 S. Ct. 848, 80 L.Ed. 1331 that "no decree rendered in its absence can bind or affect the United States * * *."

* * * * * * *

It well may be that the same principle should be applied to appropriations made by the United States which have not been included in previous adjudications to which the United States was not a party.

VII

JURISDICTION OVER THE WATER CLAIMS OF THE UNITED STATES

[458 P. 2d 771]

We now return to the proposition asserted earlier that the United States can obtain in a supplementary water adjudication in Colorado an adequate judicial determination of its rights and relative priorities. For the purpose of our holding in this respect we make the following three assumptions *arguendo:* (1) The United States has reserved water rights in Water District 37 initiated prior to more recent general adjudication decrees in that district; (2) The United States has acquired rights to the use of water under Colorado law and such rights were initiated prior to the decrees just mentioned; and (3) The United States is entitled to a decree that its rights to the use of water are the same as if each of those rights had been awarded priorities in a water adjudication next following the initiation of the right. We repeat—these are assumptions *arguendo*—not determinations.

Water rights in Colorado are of the greatest importance to the welfare and economy of the people of this state, and of considerable importance to the United States. There are about 2,700,000 acres of land under irrigation in Colorado. Of the 66½ million acres of land in Colorado, the United States has 36.4%—or about 24⅓ million acres—in the form of public domain, national forests, national parks and monuments, military reservations and an Indian reservation.

We have a situation in which the federal sovereign claims water rights which are nowhere formally listed, which are not the subject of any decree or permit and which, therefore, are etheric in large part to the person who has reason to know and evaluate [App. XVII] the extent of his priorities to the use of water. To have these federal rights in a state of uncorrelated mystery is frustrating and completely contrary to orderly procedure—and this is equally true from the standpoint of the United States as well as Colorado and its citizenry. The fact that our statutes do not provide for the adjudication of the rights of the United States with priorities prior to the dates of later decrees does not mean that our district courts in a water adjudication cannot determine the rights of the United States in relation to decreed water rights. On the contrary, our district courts have that jurisdiction. "The district courts shall be trial courts of record with general jurisdiction, and shall have original jurisdiction in all civil, probate and criminal cases, except as otherwise provided herein * * *." Colo. Const. art. VI, § 9(1). We hold that the Constitution, without the need of any statute, grants jurisdiction of the subject matter under consideration.

* * * * * * *

For the reasons already expressed as to the promotion of orderly procedure, we hold that it was the purpose and intent of the McCarran Amendment that it be used to obtain jurisdiction over the United States with respect to its reserved water rights. Of particular significance was the letter of the Acting Assistant Secretary of the Interior to the Chairman of the Committee on the Judiciary as to the McCarran Amendment under date of August 3, 1951. This is made a part of the Committee's Report mentioned earlier on pages 7 and 8. Senate Calendar No. 711, *supra.* A portion of the letter reads:

> "The interests of the United States in the use of the waters of its river systems are so many and so varied that a full enumeration of them could not be made without a great deal of careful study. It is enough, I hope, for present purposes to exemplify these interests by pointing to those which it has under the commerce clauses of the Constitution; those which exist by virtue of the creation of Indian reservations under the doctrine of *United States* v. *Winters* (207 U.S. 564 (1908) * * *

* * * We are holding here that whatever rights the United States has to water can be recognized and adjudicated by our district courts just as adequately as in any other forum—and perhaps more adequately. Therefore, it would seem that no adequate reason exists to withhold reserved rights from the light of day and adjudication.

[App. XVIII] IX

WATER RIGHT DETERMINATION AND ADMINISTRATION ACT OF 1969

[458 P.2d 774]

Senate Bill 81 adopted in 1969 (C.R.S. 1963, 148–21–1 *et seq.*) was approved after the briefs were filed in this proceeding and prior to oral argument. Following oral argument the United States and the City and County of Denver filed supplemental briefs on the subject of the effect of this Act upon the questions involved, if any. Since the district court did not have this matter before it, we deem it the better part of wisdom to await its determination with respect to this matter. We do make the observation that some or all of the parties in Water District 37, as well as in similar proceedings in other parts of the state which have been held in abeyance awaiting this opinion, may conclude that the provisions of the 1969 Act are more suitable than the pre-existing statutes for adjudications involving the United States.

Rule discharged.

[App. XIX] No. ~~1178~~ [87]

IN THE SUPREME COURT OF THE UNITED STATES

October Term, ~~1969~~ [1970]

UNITED STATES, PETITIONER *v.* THE DISTRICT COURT IN AND FOR THE COUNTY OF EAGLE AND STATE OF COLORADO

On Writ Of Certiorari To The Supreme Court Of The State Of Colorado

BRIEF FOR THE UNITED STATES

* * * * * * *

QUESTIONS PRESENTED

[See *supra* this APPENDIX, page 1]

* * * * * * *

STATUTE INVOLVED

[See *supra* this APPENDIX, pages 1 and 2]

* * * * * * *

[See *supra* this APPENDIX, pages 2 and 3]

STATEMENT

* * * * * * *

In the course of its opinion the court strongly suggested that the United States has no water rights in Colorado except those arising under State law. The court said the cases cited by the United States in support of its claimed reserved rights—*Arizona* v. *California*, 373 U.S. 546; *Winters* v. *United States*, 207 U.S. 564; *United States* v. *Rio Grande Irrigation Co.*, 174 U.S. 690; and *Federal Power Commission* v. *Oregon*, 349 U.S. 435—were not determinative. It indicated that a decision that the United States has reserved rights in Colorado streams would require the overruling of *Stockman* v. *Leddy*, 55 Colo. 24. There it had said that the United States, by admitting Colorado into the Union with a provision in its constitution declaring unappropriated waters of streams within its borders to be the property of, and subject to appropriation by, the people of Colorado,[2] lost any right to assert thereafter water rights in Colorado except those acquired by appropriation pursuant to Colorado law (A. 34–35).

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[2] This footnote omitted here.

[App XX] SUMMARY OF ARGUMENT

* * * * * * *

II

That the United States has reserved water rights based on withdrawals from the public domain is well established. *Arizona* v. *California*, 373 U.S. 546; *Winters* v. *United States*, 207 U.S. 564. The withdrawal, in 1905, of lands in Colorado for the White River National Forest reserved enough water from sources on those lands to fulfill the purposes for which they were withdrawn. The Colorado Supreme Court's suggestion that the Colorado Constitution, which has been held to assert ownership of all unappropriated waters within the State, precludes ownership by the United States of reserved rights in Colorado based on withdrawals from the public domain subsequent to statehood, is erroneous. Congress did not intend, in passing the enabling act providing for Colorado statehood, to give up any of its rights with respect to the public domain.

* * * * * * *

ARGUMENT

Introduction. An understanding of the issues in this case requires a careful consideration of federal withdrawals of land from the public domain, with particular emphasis on the purposes of such withdrawals. * * *

* * * about 443,000,000 acres have been withdrawn from the public domain for use as Indian reservations, military reservations, national parks, national forests, national recreation areas, national monuments, wildlife refuges, etc.[3] Most of these withdrawals from the public domain have been made for the express purpose of conserving important segments of that area for the future use and enjoyment of the entire public of the United States, rather than for the particular profit or use of the people who happen to live and work in the immediate area. * * *

The water rights of the United States based on federal law consist primarily of reserved rights. Reserved rights entitle the United States to use as much water from sources on lands withdrawn from the public domain as is necessary to fulfill the purposes for which the lands were withdrawn, with a priority as of the date of withdrawal, subject only to water rights vested as of that date. *Winters* v. *United States*, 207 U.S. 564, 577; *Arizona* v. *California*, 373 U.S. 546, 598, 601. Not only is this a settled principle of law, but indeed a necessary one. For it would be idle to set aside **[App.XXI]** large areas of the public domain for the enjoyment of future generations without providing the assurance of sufficient water for their maintenance.

* * * * * * *

I. 43 U.S.C. 666 Does Not Consent to Adjudications of the Reserved Water Rights of the United States

The Colorado Supreme Court has held that the United States, through the enactment by Congress in 1952 of 43 U.S.C. 666, has consented to the adjudication of its reserved water rights in State courts (A. 41). That holding is, we submit, erroneous. As indicated previously (*supra*, p. 6), the United States unquestionably has the right to use as much water from sources on lands withdrawn from the public domain as is necessary to fulfill the purposes for which the lands were withdrawn, subject only to water rights vested as of the date of the withdrawal. *Arizona* v. *California*, 373 U.S. 546, 595–601; *Winters* v. *United States*, 207, U.S. 564; *United States* v. *Ahtanum Irrigation District*, 236 F. 2d 321 (C.A. 9), certiorari denied, 352 U.S. 988; *United States* v. *Walker River Irrigation District*, 104 F. 2d 334, 336–337, 339–340 (C.A. 9). In *Winters*, where the United States asserted this right with respect to an Indian reservation, this Court said (207 U.S. at 577):

> [T]he power of the Government to reserve the waters and exempt them from appropriation under the state laws is not denied, and could not be. *The United States* v. *The Rio Grande Ditch & Irrigation Co.*, 174 U.S. 690, 702; *United States* v. *Winans*, 198 U.S. 371. * * *

This essential idea has been brought up to date and correlated with the realities of modern public land management in *Arizona* v. *California*, 373 U.S. 546, 598, 601, where this Court stated:

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[3] This footnote omitted here.

> We have no doubt about the power of the United States under these clauses [the Commerce Clause, Art. I, Sec. 8, and the Property Clause, Art. IV, Sec. 3, of the Constitution] to reserve water rights for its reservations and its property.
>
> * * * * * * *
>
> The Master ruled that the principle underlying the reservation of water rights for Indian Reservations was equally applicable to other federal establishments such as National Recreation Areas and National Forests. We agree with the conclusions of the Master that the United States intended to reserve water sufficient for the future requirements of the Lake Mead National Recreation Area, the Havasu Lake National Wildlife Refuge, the Imperial National Wildlife Refuge and the Gila National Forest.

* * * * * * *

[App. XXII] II. The Reserved Rights Doctrine Is Applicable to Lands Withdrawn From the Public Domain in the State of Colorado

While the Colorado Supreme Court has not specifically denied the existence of federal reserved water rights in Colorado or elsewhere in the West, its statements casting doubt on their existence underline our concern that State courts and State law together would, in fact, eliminate such rights. For this reason, we urge this Court specifically to reaffirm the principle that the United States has reserved water rights in the western States, including Colorado and other States with similar constitutional provisions. [See Appendix, Pages 14–15]

* * * * * * *

The fact that Colorado was admitted into the Union prior to the date of the withdrawal here involved, with a provision in its constitution which the Colorado Supreme Court, in *Stockman* v. *Leddy*, 55 Colo. 24, construed as an assertion of ownership of all unappropriated waters within its borders, does not preclude ownership by the United States of reserved water rights in Colorado. *Arizona* v. *California*, 373 U.S. 546, 597–598. By passing the enabling act providing for Colorado statehood,[12] Congress intended only to authorize statehood, not to give up any of its property rights with respect to the public domain. This is made clear by Section 4 of the enabling statute, which provides:

> [T]he people inhabiting said Territory do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within said Territory, and that the same shall be and remain at the sole and entire disposition of the United States * * *.

* * * * * * *

The supplemental adjudication proceeding in Water District 37 does not meet the foregoing requirements of a general adjudication, and the court below accordingly erred in holding that the United States was properly joined. The United States does not contend that the cases construing 43 U.S.C. 666 are necessarily dispositive of the question whether Water District 37, which embraces the watershed of one tributary of the Colorado River, comprises a "river system" within the meaning of the statute. But it seems apparent from the legislative history that Congress did not intend the United States to be burdened with the defense of innumerable suits to adjudicate only fragments of recognizable river systems. Since the United States has water rights throughout entire river systems, such as the Colorado River, it is more likely to be adversely affected by piecemeal [App. XXIII] adjudications than private parties whose interests are not so widespread. Where a river system can be said to be wholly contained within one State, the proceeding should at least relate to the entire system and include all parties asserting rights to the water thereof. And where a river system traverses the boundaries of a single State, the United States should not, we submit, be required to assert its right in any proceeding that is less than statewide in character.

* * * * * * *

MAY 1970.

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[12] This footnote omitted here.

[App. XXIV] No 87

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1970

UNITED STATES, PETITIONER v. THE DISTRICT COURT IN AND FOR THE COUNTY OF EAGLE AND STATE OF COLORADO * * * RESPONDENTS

THE COLORADO RIVER WATER CONSERVATION DISTRICT, CITY AND COUNTY OF DENVER * * * CENTRAL COLORADO WATER CONSERVANCY DISTRICT, * * * AND THE NEW JERSEY ZINC COMPANY, INTERVENORS

On Writ of Certiorari to the Supreme Court of the State of Colorado

BRIEF FOR RESPONDENTS AND INTERVENORS

* * * * * * *

STATEMENT

In October 1967, upon the petition of the Colorado River Water Conservation District,[1] the District Court for Eagle County, Colorado issued a Notice of Application for Supplemental Adjudication of Water Rights (A. 3–4) covering the Eagle River and its tributaries,[2] an intrastate river system[3] tributary to the Colorado River. * * *

* * * * * * *

When the respondent court denied the motion to dismiss and calendared the case, intead of actually filing the claims its memorandum referred to so that they could be known and evaluated, the Government applied to the Supreme Court of Colorado for a writ of prohibition (A. 10–15), at the same time advising that court (A. 14):

> [App. XXV] It should be pointed out, of course, that *if this Court* were to find that this Application and its supporting brief misstate Colorado law and *were to hold that the United States could adjudicate all of its rights in proceedings such as this and obtain the true priority date of its reserved and appropriative rights, most of the objections of the United States to these adjudications would be removed.* (Emphasis added.)

The Supreme Court of Colorado issued a rule to show cause to the court below (A. 16), answer was made (A. 17–18), and the Colorado Supreme Court reviewed the case on briefs and oral arguments.[5] * * *

* * * * * * *

SUMMARY OF ARGUMENT

* * * * * * *

II

The issue on which the Government sought certiorari in this Court was whether the respondent court had jurisdiction to entertain the Government's claims. The respondent court supported that effort in order to put the jurisdictional issue to rest and this Court accepted the case on that basis. Now the Government in effect seeks a declaratory order "reaffirm[ing] the principle that the United States has reserved water rights" while at the same time asking this Court to dismiss it from any adjudication. The reason to reaffirm reserved rights, we are told, is that the court below made statements "casting doubt on their existence [thus underlining] our concern that State courts and

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[1] This footnote omitted here.

[2] This footnote omitted here.

[3] The Eagle River is a substantial tributary of the Colorado River in Colorado. The mainstream is about 65 miles in length, and of numerous tributaries, some 17 totalling an additional 180 miles may be considered major water producers. The system drains 950 square miles and delivers to its confluence with the Colorado River an annual average of about 408,000 acre feet of water after all present upstream depletions.

[5] The Colorado River Water Conservation District appeared on behalf of and in support of the action of the respondent court denying the motion of the United States to dismiss. Other respondents below were parties in the adjudication proceeding. The City and County of Denver is the largest single user of water in the State and a substantial part of its water supply will come from the Eagle River system. The Central Colorado Water Conservancy District is a claimant of water in that area and New Jersey Zinc Company is also an owner, user and claimant of water in the area. All are affected by the rights the United States indicates it would claim.

State law together would . . . eliminate such rights." *If* the court below does in fact do that, then is the time for informed review of the question. But the court below has not done so and thus the question is not here. Even if it were, the many unresolved questions concerning reservations and whatever water rights may attach thereto make it clear that this Court should await a factual determination below before proceeding further, assuming any further action at that time is necessary. This Court has not heretofore made a blanket reaffirmance of the reservation principle and should not now. It has only been enunciated in the past when the facts before the Court justified its implication.

III

As noted, in seeking prohibition the United States told the Supreme Court of Colorado that if it:

> were to hold that the United States could adjudicate all of its rights in proceedings such as this and obtain the true priority date of its reserved and appropriative rights, most of the objections of the United States to these adjudications would be removed." (A. 14)

* * * * * * *

[App. XXVI] II. Upon The Resolution Of The Question Of Jurisdiction, Which Is All That Was Decided In Both Courts Below, Many Unresolved Issues Remain For Trial And Determination Before Claims Under The Reservation Doctrine Will Be Ripe For Review In An Apellate Court Or Before It May Properly Be Asserted That State Proceedings "Eliminate" (Brief 20) Such Rights.

The Government's request that this Court "reaffirm the principle [of] reserved water rights" (Brief 20) prior to a presentation of specific claims is premature, unnecessary to a decision of this cause, and presents a question not before the Court on certiorari.

* * * The Supreme Court of Colorado did in fact state (A. 37):

> We are not determining whether the United States has reserved water rights in connection with lands withdrawn subsequent to August 1, 1876, the date of Colorado's admission to the Union; nor, if so, whether these rights have priority over previously adjudicated rights. These questions properly should be decided after the United States presents its specific claims for adjudication and the issues of fact and law are clearly drawn.

* * * * * * *

The Government plainly misconstrues the court below in charging that the cases cited by the United States in support of its claimed reserved rights—*Arizona* v. *California*, 373 U.S. 546; *Winters* v. *United States*, 207 U.S. 564; *United States* v. *Rio Grande Irrigation Co.*, 174 U.S. 690; and *Federal Power Commission* v. *Oregon*, 349 U.S. 435—were held as not "determinative" as a consequence of the Colorado Constitution and *Stockman* v. *Leddy*, 55 Colo. 24 (Brief 4–5). * * *

The United States should go back to that court for a determination of all of its claims before it comes here expressing concern that "State courts and State law together would, in fact, eliminate such rights" (Brief 20). At least one reason for the need for such a determination is that most and possibly all reserved rights claimed to exist must be implied if they are to be found at all, and then quantified to bring certainty in water use. This Court found in *Arizona* v. *California*, 373 U.S. 546, that the reserved rights claimed for Indian Reservations had to be implied (at 599), as had been the case in *Winters* v. *United States.* The Special Master in *Arizona* v. *California* had found ". . . the intent to reserve water was never explicitly stated at the time the Indian Reservation was established; rather that intent was implied from the circumstances surrounding the creation of the Reservation".[50] He thus took a great amount **[App. XXVII]** of evidence concerning these Reservations, including their population, economy, acreage and water requirements and then quantified the water rights for five Reservations on the mainstream of the Colorado River, rejecting the possibility of an open-end decree,[51] in order to "establish water rights of fixed magnitude and priority so as to provide certainty for both the United States and non-Indian users." This Court specifically approved the Master's findings that a reservation of water had been intended for each of the five Indian Reservations involved, agreed with his conclusion as to the quantity of water intended to be reserved, and found the various irrigable acreages included by the Master in reaching quantities of water to be reasonable.[52] This specificity in treating with conflicting claims in this vital area of water rights is in our view the great contribution of the adjudcatory process, and was what Congress intended in consenting to the joinder of the United States in State proceedings for the consideration of all claims.[53]

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[50] This footnote omitted here.

[51] This footnote omitted here.

The necessity for doing away with the uncertainty engendered by the implied reservation doctrine is strongly urged in the recent Public Land Law Review Commission Report.[54] That Report also details problems arising out of the reservation concept, most if not all of which require some evidentiary proceeding before a determination could be made.[55] These unresolved issues in connection with reservations provide additional reasons why we urge this Court to decline the Government's invitation to generalize now on the reservation principle.

[App. XXVIII] To dispose of the uncertainty and other problems in the reservation doctrine the Commission suggests legislation to:

1. Provide a reasonable time for Federal agencies to give public notice of water needs for reserved areas and forbid assertion of reserved claims not so published.
2. Establish procedures for administrative or judicial determination of the reasonableness of the quantity claimed, or the validity of the proposed use under present law.
3. Provide that express reservations of water be made in connection with any future reservations of land, and
4. Require that compensation be paid where application of the implied reservation doctrine interferes with uses vested prior to the *Arizona* v. *California* decision in 1963.

* * * * * * *

III. * * *

Nevertheless the Government says that "even if an entire river system is in fact involved"[62] we do not have a general adjudication because the necessary parties were not before the court at the time of the attempted joinder. The Colorado Supreme Court found no difficulty in holding this to be a general adjudication within the meaning of *Dugan* v. *Rank*, 372 U.S. 609, 618, because proceedings such as involved in this case met the tests therein prescribed, *i.e.*, this is a public, not a private suit; all claimants are parties; relief is granted as between claimants; and priorities are established. Under Colorado law the adjudication proceedings are "general" whether an original action within a water district or one supplementary thereto. Such actions are in the nature of *in rem* proceedings, and, in the instant case, all statutory notice requirements were complied with.[63] Upon such compliance the court acquired jurisdiction of all persons using or claiming the right to use waters of the Eagle River and its tributaries.

The Government now urges that since it would, if otherwise properly a party, claim rights antedating in priority the rights of others already in decree, the owners of those rights are necessary parties before the United States can properly be joined. The Government asserts this despite the fact it has not actually filed such claims, without which the need for and the identity of such parties cannot be determined. Furthermore, this assertion is made despite [App. XXIX] the fact the court below said appropriate notice could be given upon the filing of such claims.[64] Additional parties are necessitated, if at all, not by joinder of the United States but by the claim or claims it makes.

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[52] This footnote omitted here.

[53] This Court in *Arizona* v. *California* approved the fact that the Master declined to adjudicate claims by the United States for other Indian Reservations and federal establishments, particularly those relating to tributaries (*Id.* 595). The Master found it inappropriate to adjudicate matters of intrastate rights and priorities on the tributaries (Master's Report 332–334), and this Court noted that under § 18 of the Project Act "regulation of the use of tributary water" was left to the States (*Id.* 588). The Master did adjudicate conflicting claims of the States and of the Government on the Gila River because this was an interstate tributary on which the controversy was immediate and requiring of decision. But even here he declined to approve a claim on behalf of an Indian Reservation located in Arizona against (1) users of water in New Mexico because the evidence showed it to be impractical, as well as against (2) users of water in Arizona because this was a matter of "intrastate rights and priorities". (Report 333–334). These few references show the desirability of an adjudication and a record before reaching conclusions as to the extent of any claims to the use of water.

[54] This footnote omitted here.

[55] This footnote omitted here.

[62] This footnote omitted here

[63] This footnote omitted here.

JULY 15, 1970.

(App. XXX) No. 87

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1969 [1970]

UNITED STATES, PETITIONER *v.* THE DISTRICT COURT IN AND FOR THE COUNTY OF EAGLE AND STATE OF COLORADO

On Writ of Certiorari To The Supreme Court Of The State Of Colorado

AMICUS CURIAE BRIEF FOR THE STATES OF COLORADO, OREGON, NEVADA, IDAHO, MONTANA AND ALASKA IN SUPPORT OF THE DISTRICT COURT IN AND FOR THE COUNTY OF EAGLE AND STATE OF COLORADO

* * * * * * *

STATEMENT OF INTEREST

* * * * * * *

Various federal agencies have claimed that the reservation of land for various purposes also reserved sufficient water necessary to effectuate the purpose of the Reservation. The acceptance of such a theory of claims by the federal agencies would, on a fully utilized stream, create a situation wherein increased federal uses would deny water to users who had water rights with priorities established after the Reservation, but prior to the expanded use.

* * * * * * *

The States do not wish to deprive the Federal Government of valuable water rights. They know only too well that related land resources are much less valuable without the water necessary for their development. The States ask only an identification of the extent of the federal rights, so that existing uses might be protected and future developers, whether Federal, state or private, might better be able to predict the water supply available for further development.

QUESTION PRESENTED

Whether the United States, by reliance upon the anachronistic defense of sovereign immunity, should be allowed to avoid the identification of its claims to the use of water from reserved lands needed for the protection of existing rights and the establishment of the stability necessary for meaningful future planning of water resource development.

* * * * * * *

[App. XXXI] [Page 21 of brief]

> The interests of the United States in the use of the waters of its river systems are so many and so varied that a full enumeration of them could not be made without a great deal of careful study. It is enough, I hope, for present purposes to exemplify these interests by pointing to those which it has under the commerce clasuses of the Constitution; those which exist by virtue of the creation of Indian reservations under the doctrine of the *United States* v. *Winters* (207 U.S. 546 (1908)) or by virtue of the creation of, for instance, a national park; those which it has asserted by entering into international treaties; those which it may have by virtue of its present and prior ownership of the public domain and which have not vested under [a series of specified acts]; those with respect to which its officers and employees have followed the procedure prescribed in Section 8 of the Act of June 17, 1902 (32 Statutes 388, 43 U.S.C. 383); and those which it has acquired by purchase, gift, or condemnation by private owners. Since the United States can be said, with varying degrees of accuracy, to be the "owner" of rights of any or all of these types, it is clear to me that enactment of the bill could lead to a tremendous volume of unwarranted litigation and, in the absence of a complete and detailed catalogue of all the rights and interests which the United States has in the stream systems of

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[64] This footnote omitted here.

the nation, to the hazard that, by overlooking some, it would be forever precluded from asserting them thereafter.

* * * * * * *

CONCLUSION

For the foregoing reasons, the decision of the Colorado Supreme Court should be affirmed. [Though the decision is not cited in the Amicus Curiae brief, see 458 P.2d 760]

[Submitted by Attorneys General, State of Colorado, State of Oregon, State of Nevada, State of Idaho, State of Montana, State of Alaska]

[App. XXXII] No. 87

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1969 [1970]

UNITED STATES, PETITIONER v. THE DISTRICT COURT IN AND FOR THE COUNTY OF EAGLE AND STATE OF COLORADO, RESPONDENT

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF COLORADO

BRIEF FOR THE STATE OF ARIZONA AND THE ARIZONA INTERSTATE STREAM COMMISSION AS AMICI CURIAE

* * * * * * *

ARGUMENT

I.

The basic dilemma which the McCarran Amendment[2] was intended to resolve is well-known. In the usual case the water rights of any individual claimant cannot be determined in isolation from the rights of other claimants along the same stream or other water source. A judicial determination that any one individual is entitled to a water right in a given source is of small significance, even to the claimant, unless there has also been a determination concerning the validity of other claims to the same source, including relative priorities, and quantities to which each claimant is entitled. As the Ninth Circuit Court of Appeals has observed:

> "The only proper method of adjudicating the rights on a stream, whether riparian or appropriative or mixed, is to have all owners of land on the watershed and all appropriators who use water from the stream involved in another watershed in court at the same time." *People of the State of California* v. *United States*, 235 F.2d 647, 663 (9th Cir. 1956).

* * * * * * *

The Ninth Circuit Court of Appeals stated the purpose of the McCarran Amendment as follows:

> "There can be little doubt as to the kind of suit Congress had in mind. It was not a private dispute between certain water users as to their conflicting rights to the use of waters on the stream system; rather, it was the [App. XXXIII] quasi-public proceeding in which the law of western waters is known as a 'general adjudication' of the stream system: one in which the rights of all claimants on the stream system, as between themselves, are ascertained and officially stated." *State* v. *Rank*, 293 F.2d 340, 347 (9th Cir. 1961).

* * * * * * *

* * * The significance of the statutory reference to both "river system" and also "other source" is illustrated by a situation in Arizona which is typical of the situation in other western states. The Verde River and Tonto Creek are both tributaries of the Salt River, which, in turn, is a tributary of the Gila River, which, in turn, is a tributary of the Colorado River in its lower reaches. The headwaters of Tonto Creek are some 80 miles from the headwaters of the Verde River and these two are separated at all points by two large mountain ranges. The confluence of Tonto Creek and the Salt River is some 50 miles East of the confluence of the Salt and Verde Rivers. Physically it would be impossible for a

user on the Verde River to interfere with a user on Tonto Creek. Of course, if an adjudication involved the rights to the use of water from the Salt River below the confluence of the Verde, then the adjudication would be broadened; perhaps such an adjudication is what was anticipated by the words "river system." However, the rights of the appropriators or users on the Verde River obviously could be adjudicated without joining the users on the Tonto.[5] * * *

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[2] This footnote omitted here.

* * * A person who owns land along the Verde River and uses water of the Verde River is simply not affected by the claims of other persons along the Tonto, the Gila, or other tributaries or subtributaries of the Colorado, unless by coincidence the same person also happens to own other land on which he uses the waters of those rivers.

* * * As the Ninth Circuit Court of Appeals stated in *State of Nevada* v. *United States*, 279 F.2d 699, 701 (9th Cir. 1960):

> "The suit to which the section [666] refers is one to establish the relative rights of users of the waters of a stream or other common source: one to settle disputes between such water users with respect to their rights among themselves."

* * * * * * *

[App. XXXIV] Whatever the scope of sovereign immunity generally, in water rights litigation involving an entire river system or other source, sovereign immunity has been waived by the Congress of the United States. What Congress has done should not now be undone by this Court.

* * * * * * *

Attorney General of the State of Arizona.

* * * * * * *

Special Counsel, Arizona Interstate Stream Commission.

(App. XXXV) IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1969 [1970]

No. 87

UNITED STATES, PETITIONER *v.* THE DISTRICT COURT IN AND FOR THE COUNTY OF EAGLE AND STATE OF COLORADO

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF COLORADO

AMICUS CURIAE BRIEF FOR THE STATE OF UTAH

* * * * * * *

[For consequences of attempted piecemeal adjudication by the Justice Department and the attendant abridgment and loss of invaluable rights to the use of water by the United States of America, see In re Green River Adjudication v. United States of America, Appellant, 17 Utah 2d 50, 440 P. 2d 251, particularly 252]

[App. XXXVI] IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1969 [1970]

No. 1178 [87]

UNITED STATES, PETITIONER, *vs.* THE DISTRICT COURT IN AND FOR THE COUNTY OF EAGLE AND THE STATE OF COLORADO, RESPONDENT.

Brief of the State of California as Amicus Curiae in Support of the District Court in and for the County of Eagle and State of Colorado

* * * * * * *

SUMMARY OF ARGUMENT

* * * * * * *

Amicus contends that the McCarran Amendment waives immunity in an adjudication of water rights' claims *inter sese* within any determinable unit, whether that unit be the whole or a portion of a river system. Amicus further asserts that since an adjudication exclusive of "reserved rights" would render such litigation and the McCarran Amendment utterly valueless, reserved rights are clearly within the scope of rights intended to be determined under the McCarran immunity waiver.

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[5] This footnote omitted here.

ARGUMENT

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* * * In *Miller* v. *Jennings*, 243 F. 2d 157, 159, the court indicated that a general adjudication could result among those only on the Upper Rio Grande. [Contrary to express ruling—the suit was brought in Texas] In *Arizona* v. *California*, 373 U.S. 546, this court entertained essentially a general adjudication of the Lower Colorado River Basin. Thus there can be no doubt of the efficacy of adjudicating that portion of a stream requiring such a supply and demand determination without adjudicating the whole. [Contrary to express ruling: That case involved a Congressional allocation among the Lower Basin States, see 373 U.S. 546, 565 et seq.]

* * * * * * *

Dated: June 12, 1970.

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Attorney General,

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State of California.

[App. XXXVII] No. 1178 [87]

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1969 [1970]

UNITED STATES, PETITIONER *v.* THE DISTRICT COURT IN AND FOR THE COUNTY OF EAGLE AND STATE OF COLORADO

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF COLORADO

AMICUS CURIAE BRIEF FOR THE STATE OF OKLAHOMA

JUNE 15, 1970 * * *

* * * * * * *

INTEREST OF AMICUS CURIAE

The State of Oklahoma is essentially an appropriation state with respect to water adjudication, 87 O.S. Supp. 1969, § I–A. In determining water rights within its borders the State is faced with the problem that the United States asserts certain water rights based upon the doctrine of reserved rights. Such being the case, all determinations of water rights made concerning river systems in which the United States claims reserved rights, are subject to such reserved rights. This leads to confusion and uncertainty as concerns the water rights in such river systems. Therefore, it is believed that there should be some method through which the state can force the United States into some forum in order to determine the extent of the rights the United States has in such river sysem. The State of Oklahoma therefore has an interest in the question of whether or not 43 U.S.C. § 666 consents to suit against the United States in situations where the United States claims water rights under the doctrine of reserved rights.

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Attorney General.

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* * * State of Oklahoma.

[App. XXXVIII] IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1969 [1970]

UNITED STATES, PETITIONER *v.* THE DISTRICT COURT IN AND FOR THE COUNTY OF EAGLE AND STATE OF COLORADO, RESPONDENT

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF COLORADO

AMICUS CURIAE BRIEF FOR THE STATE OF WASHINGTON

* * * * * * *

[Contrary to the position of the Justice Department, the State of Washington very correctly views the adjudications as involving Indian rights and, indeed, sets out a verbatim opinion which, among other things, declares:]

* * * It would appear the United States may own land in the water shed and it is trustee for an Indian ward allottee having lands within the water shed * * *.

* * * * * * *

[Brief dated July 1970—by * * * Attorney General * * * State of Washington]

[App. XXXIX] IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1969 [1970]

No. 87

UNITED STATES, PETITIONER v. THE DISTRICT COURT IN AND FOR THE COUNTY OF EAGLE AND STATE OF COLORADO

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF COLORADA

AMICUS CURIAE BRIEF FOR THE STATE OF WYOMING

* * * * * * *

[Contrary to Justice Department position that Indian rights to the use of water are not involved, what are referred to as the principles of the Winters Doctrine are reviewed in detail in the Wyoming Amicus Curiae brief.

See citation of cases which set forth numerous references to the Winters Doctrine predicated upon Indian rights to the use of water held in trust by the United States, as proving properties owned by the Indians.]

JULY 1970.

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Wyoming Attorney General.

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[App. XL] SEPTEMBER 25, 1970.

STATEMENT IN SUPPORT OF S. 4165 "TO PROVIDE FOR THE CREATION OF THE INDIAN TRUST COUNSEL AUTHORITY, AND FOR OTHER PURPOSES"

CONFLICTS OF INTEREST WITHIN THE FEDERAL GOVERNMENT THREATEN AMERICAN INDIANS THROUGHOUT WESTERN UNITED STATES

William H. Veeder

* * * * * * *

Gravest crisis confronting the American Indians in Western United States in general and in the Colorado River Basin in particular is the *Eagle River Adjudication* now pending before the Supreme Court.[3] Briefly the important facts and issues of the *Eagle River Adjudication* as it relates to the Indians are these:

1. Seventy percent (70%) of all of the water in the Colorado River rises in the State of Colorado. Eagle River is a principal tributary of the Colorado River within the last mentioned State.

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[3] United States * * * v. The District Court in * * * County of Eagle and State of Colorado and the Judge thereof * * *.

2. The Colorado River is grossly overappropriated largely due to projects built either by Federal agencies or in conjunction with the States within the Colorado River drainage system or subdivisions of those States.

3. Gross overappropriation by the Federal Government is but one aspect of the crisis facing the American Indians in the Colorado River Basin. Pollution of that stream is an ever-increasing and immediate threat particularly to the mainstream Reservations—Fort Mojave, Chemehuevi, Colorado River Indian Reservation, Cocopah and Fort Yuma. That pollution of the stream is due to man-made depletions—reservoir evaporation losses; diversions, both in-basin and transmountain, by the Federal Government or cooperating agencies; and evapotranspiration.

4. Any relinquishment by the Federal Government of rights to the use of water in the Eagle River or other tributaries of the Colorado River, or the failure fully to assert American Indian rights in those tributaries, and correctly to represent those Indian interests, constitutes a grave threat not only to the main-stream Reservations but Reservations which rely upon the Green River, San Juan, Little Colorado and tributaries of those streams.

5. Loss of Indian rights on any of the tributaries of the Colorado River necessitates that the deficit in water supply thus created be compensated by increased burdens upon [App. XLI] the other tributaries, the San Juan River and its tributaries, the Green River and its tributaries, for example.

6. Invaluable rights to the use of water are held by Indians and Indian Tribes throughout the Colorado River Basin, on the mainstream, the tributaries, and tributaries of tributaries, all inter-related, all inter-dependent. These include, but are not limited to, the Reservations of the Navajos, the Southern Utes, the Ute Mountain, the Uintah-Ouray, the Fort Mojaves, Chemehuevis, Hualapais, Colorado River Indian Tribes, the Cocopahs, Fort Yumas, among others.

7. These basic principles respecting the Indian *Winters Doctrine* prior and paramount rights in the Colorado River Basin must be kept in the foreground in this consideration:

(a) Indian *Winters Doctrine* rights to the use of water in the streams which arise upon, border or traverse the Indian Reservations are part and parcel of the land itself, having all the dignity of a freehold interest in real property;

(b) Indian rights to the use of water are private interests in real property held in trust for the Indians by the National Government for the benefit of the Indians;

(c) Indian rights, being private interests in real property and held in trust for the benefit of the Indians, are *not* the property of the United States available for its use as distinguished from the Indian use;

(d) In its status as trustee of the Indian rights to the use of water the National Government must, in protection and preservation of them, exercise the highest degree of care, skill and diligence, as a consequence of which it must, among other things, assert the full measure and extent of those rights throughout the Colorado River Basin.

(e) Indian rights to the use of water in the Colorado River Basin so gravely threatened by the gross overappropriation of that stream—the pollution of it—may thus be characterized:

(i) they entitle the Indians for whom they are held in trust to quantities of water sufficient to meet their present and future water requirements;

(ii) the title to rights to the use of water held in trust by the Nation for them, in whatever source or stream [App. XLII] they exist, extends to the very well springs of the stream system which supply the water, including but not limited to the Eagle River in Colorado;

(iii) the Indian rights to the use of water relate not only to a quantity of water to meet present and future needs, but those rights relate to the maintenance of a quality of water—not polluted water—which can reasonably be utilized by the Indians.

8. Failure by the National Government, Trustee, to assert Indian rights throughout the Colorado River Basin, in the Eagle River or other tributaries, threatens those rights not only as to quantity but likewise quality, which is inextricably interrelated to quantity.

9. *Eagle River Adjudication as conducted before the Supreme Court—a threat not only to Indian rights to the use of water in the Colorado River Basin, but could give rise to a precedent subjecting Indian rights to State courts and laws with disastrous consequences.* A prime issue presented by the Justice Department to the Highest Court for resolution in the *Eagle County Adjudication:*

> Did the United States waive its sovereign immunity from suit in regard to its "reserved rights" to the use of water when Congress enacted 43 U.S.C. 666?[4]

This query: Does it apply to Indian rights?

Reference at this juncture is made to the Presidential condemnation of the conflict of interest within the Justice Department respecting Indian rights to the use of water. There the President in his July 8, 1970, message, having described that "inherent conflict of interest," said, among other things, to the Congress: "The * * * Attorney General must at the same time advance *both* the *national* interest in the use of land and water rights *and* the *private* interests of Indians in land which the government holds as trustee."

In keeping with the Presidential condemnation, without in any way advising the Supreme Court that the *Winters Doctrine* Indian rights to the use of water are private in character—totally different from the standpoint of the law from the rights of the Nation itself—the Justice Department in its brief defined in error the "Reserved rights" as follows:

> **[App. XLIII]** "Reserved rights have been defined by this Court as *the entitlement of the United States to use* as much water from sources on lands withdrawn from the public domain as is necessary to fulfill the purposes for which the lands were withdrawn, * * * Arizona v. California, 373 U.S. 546, 595–601."[5] (Emphasis supplied.)

Under no circumstances can the American Indians tolerate the Justice Department erroneous assertion to the Supreme Court that the "Reserved rights" as defined in *Arizona* v. *California* is "the entitlement of the United States to use" water. Yet the Justice Department Petition for Certiorari, its brief and all supporting data, reiterate and reaffirm that error without at any time declaring that the Indian rights do not—could not—come within the erroneous definition of "Reserved rights" presented to the Court.

In the Petition for Certiorari the failure to distinguish the Indian *private* rights from the Nation's public rights is well demonstrated by this excerpt from it: Having again alluded to the "federal government's reserved water rights"; "the rights of the United States to use the water on its public land"; the Justice Department describes the magnitude of its problem in the *Eagle River Adjudication* by stating: "* * * about 443,000,000 acres have been withdrawn from the public domain for use as Indian reservations, national parks, national forests * * *."[6] This entirely incorrect endeavor to meld; to categorize the Indian rights with the Federal rights to use water, threaten a catastrophe to the Indians if 43 U.S.C. 666 is held to be applicable to the Federal rights, which as presented by the Justice Department to the Supreme Court, would necessarily embrace those Indian rights. Nevertheless throughout the brief of the Justice Department to the Supreme Court, would necessarily embrace those Indian rights. Nevertheless throughout the brief of the Justice Department to the Highest Court, that error is repeated and compounded on numerous occasions.[7] A striking aspect of the brief is this:

> Although never distinguishing Indian rights to the use of water from Federal rights to the use of water, the Justice Department, with possibly a single exception, relies on decisions which relate entirely or predominantly to the Indian private rights held in trust for them by the National Government.

10. *Failure of Justice Department to Distinguish Indian Private Rights Held in Trust by the United States, From Federal Rights Held for the Public, Threatens—*

> **[App. XLIV]** (a) *To subject Indian rights to the waiver of immunity from suit under 43 U.S.C. 666;*
>
> (b) *To subject Indian rights to State court jurisdiction;*
>
> (c) *To subject Indian rights to State law with all of the attendant irreparable damage to American Indians.*

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[4] 43 U.S.C. 666, Act of July 10, 1952, 66 Stat. 560 * * *

[5] No. 87 In the Supreme Court of the United States, October Term, 1970, United States v The District Court in * * * County of Eagle * * *.

[6] Petition for Certiorari to the Supreme Court * * * of Colorado, pages 10–11.

[7] * * * Brief for the United States, pages 3–14.

There have been reviewed in detail the Justice Department Petition for Certiorari and Brief that:

> Failed to advise the Supreme Court that Indian private rights to the use of water held in trust for them, are drastically different from Federal rights held for the public at large; are governed by vastly different laws and concepts:
>
> Failed to advise the Court that there are innumerable Treaties in which the Indians retained their invaluable immemorial rights and that those rights were never part of the public domain, nor were they carved from the public domain as the Justice Department repeatedly stated in error;
>
> Failed to advise the Court that the decisions relied upon involved almost entirely Indian rights or were predominantly Indian rights, and did not pertain to Federal "Reserved rights" for national parks, national forests, Bureau of Land Management properties.

Consistent with its failure to distinguish the Indian rights, private in nature, held in trust by the National Government, from federally owned "Reserved rights" for public purposes, the Justice Department likewise failed to inform the Supreme Court that:

> The Congressional waiver of sovereign immunity from suit in 43 U.S.C. 666 did not include the Indian rights to the use of water in the Colorado River Basin or elsewhere in the United States.
>
> Let these principles be emphasized:
>
> Indian Tribes are sovereigns in their own right—albeit limited—and as sovereigns they are, and their properties are: (a) immune from suit in the absence of express waiver of that immunity, which 43 U.S.C. 666 most assuredly is not; (b) not subject to State court jurisdiction; (c) not subject to State law.

[App. XLV] Yet, irrespective of those precepts of Indian Law, the Justice Department in its Petition and Brief to the Supreme Court, failed to make reference to them. Hence a decision can reasonably be anticipated to the effect that the "Reserved rights" of the National Government include the Indian private rights held in trust, which is denied; that 43 U.S.C. 666 constitutes a Congressional waiver of the sovereign immunity from suit in regard to the Indian rights, which is likewise denied.

Indian prior and paramount rights are legally and conceptually different from the rights to the use of water acquired under the doctrine of prior appropriation strictly adhered to in Colorado and other like-minded States. As a consequence, to subject the Indian rights to the use of water in the Colorado River or the tributaries to that stream to State courts or laws would be tantamount to a confiscation of those rights and the Indian priorities which are property rights protected under the National and State constitutions. This disaster to the American Indians may very well ensue by reason of the facts and law as presented by the Justice Department to the Supreme Court in the Eagle River Adjudication.

11. *A proposition has been offered by Justice to the Colorado courts which the American Indians cannot tolerate*

In the *Eagle River Adjudication* the Justice Department made no reference to the Indian rights in the tributaries of the Colorado River. It asserted only the "Reserved rights" of the Nation for the National Forests and the Bureau of Land Management. That case thus becomes the classic example of the conflicts of interest within the Department of Justice. It ignores completely the fact that Eagle River and other tributaries are the life blood of the American Indians throughout the Colorado River Basin and that the Indians own invaluable rights in those tributaries.

Confronted with adverse rulings in the *Eagle River Adjudication*, holding that 43 U.S.C. 666 awarded jurisdiction to the State courts, this proposition was made to the Supreme Court of Colorado:[8]

> "*It should be pointed out, of course, that if this Court were to find that this Application and its supporting brief misstate Colorado law and were to to hold that the United States could adjudicate all of its rights in proceedings such as this and obtain the true priority date of its reserved and appropriative rights, most of the objections of the United States to these adjudications would be removed.* While the United States could not, even then, be joined as

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[8] United States v. The District Court in * * * County of Eagle * * * Appendix, page 14.—No. 87 * * * October Term 1970.

> a defendant under 43 U.S.C. sec. 666, for the reason that an entire river system **[App. XLVI]** would not be involved, *the United States would be assured it could have its rights properly adjudicated if it chose to appear as plaintiff in a Colorado Water District adjudication. While no representation can be made at this time as to what the United States would do in any particular case, it can be represented that the Department of Justice would raise no general objection to appeareancs as plaintiff in appropriate casees under the supposed circumstances.*" (Emphasis supplied.)

That proposition must be viewed on this background:

(a) Only Forest Service rights and Bureau of Land Management rights would be presented;

(b) On the western slope of Colorado there are at least eleven other Water Districts involving State adjudications comparable to the *Eagle River Adjudication,* which would benefit from the Justice proposition, indeed that proposition specifically relates to at least three other State court adjudications;[9]

(c) No mention is made of the downstream rights of the Indians the very existence of which is predicated upon the Eagle River and other streams, all as emphasized above.

Should the Justice Department proceed to fulfill its offer to the Colorado Court, the Indians in the Colorado River Basin would suffer irreparable and lasting damage.

Every phase and aspect of the *Eagle River Adjudication* reviewed at some length above, has been thoroughly researched. If this Committee desires a presentation of that research and documentation supporting the conclusions expressed, it will be presented upon request and made a part of this statement.

[App. XLVII] No. 812

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1970

UNITED STATES OF AMERICA, PETITIONER *v.* THE DISTRICT COURT IN AND FOR WATER DIVISION NO. 5, STATE OF COLORADO, AND THE JUDGE THEREOF, THE HONORABLE CLIFFORD H. DARROW, AND THE WATER REFEREE THEREOF

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF COLORADO * * *

* * * * * * *

The Solicitor General, on behalf of the United States, petitions that a writ of certiorari be granted to review the judgment of the Supreme Court of the State of Colorado entered in this case on July 9, 1970.

OPINION BELOW

The Colorado Supreme Court did not render any opinion. The opinion and order of the Water Court (App. B, *infra*, pp. 10–13) are not reported.

* * * * * * *

QUESTIONS REFERRED

[See *supra* this APPENDIX Page 1]

* * * * * * *

STATUTE INVOLVED

[See *supra* this APPENDIX pages 1 and 2]

* * * * * * *

STATEMENT

On February 11, 1970, the Attorney General received a notice, pursuant to the Colorado Water Right Determination and Administration Act of 1969, Colo. Rev.

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[9] *Note:* 1969 changes in the administration of rights to the use of water in the State of Colorado in no way change the basic concepts set forth in this statement.

Stat., 148–21–1 *et seq.*, directed to "all persons interested in water applications in said water division No. 5," [App. XLVIII] that "the following is a résumé of all applications filed in the office of the water clerk during the month of December, 1969" (App. A, *infra*, p. 9). There followed a list of water right applications giving brief descriptions of the water use. The notice concluded with the statement that "[y]ou are further notified that you have until the last day of March, 1970, to file a verified statement of opposition to any such application, if you desire to oppose any such applications." Similar notices have been received listing water right applications filed during each month thereafter. In addition, the Attorney General received similar resumés of applications filed in Water Divisions 4 and 6 during the month of December 1969.

In response to the December 1969 notice, the United States filed with the Water Court of Water Division 5 a motion to quash service on the grounds, *inter alia*, that the proceedings before the water court did not constitute the type of water rights adjudications with respect to which the United States had consented to be sued under 43 U.S. 666. (sic) The water court denied the government's motion (App. B, *infra*, pp. 10–13). It recognized that the consent issue is presently before this Court in *United States* v. *The District Court in and for the County of Eagle and the State of Colorado*, No. 87, this Term, certiorari granted, 397 U.S. 1005, a case arising from an earlier Colorado water rights proceeding involving a portion of the same water rights here involved. The court was of the view that it was bound by the decision of the Colorado Supreme Court in *Eagle County* unless and until that decision was overturned by this Court (App. B, *infra*, pp. 12–13). Subsequently, the government's request to extend the time within which to file an answer pending the resolution of *Eagle County* was also denied. Finally, the government applied to the Colorado Supreme Court for a writ of prohibition to stay the proceedings, which the latter court denied on July 9, 1970 (App. C, *infra*, p. 14).

In *Eagle County*, the United States was joined as a defendant to a supplemental water adjudication proceeding for Water District 37, one of the then 70 water districts in Colorado. Subsequent to the Colorado district court's denial of the government's motion to dismiss that action for lack of jurisdiction, the Colorado Water Right Determination and Administration Act of 1969 was passed, abolishing[1] the 70 water districts and replacing them with seven water divisions. Water Division No. 5 includes the area drained by the Colorado River and its tributaries (excluding the Gunnison River), which also includes the former Water District 37 involved in the *Eagle County* case.

The water rights of the United States within the expanded area, however, are vastly more numerous than those involved in the *Eagle County* case. The Forest Service administers four separate national forests in the area: the White River, Arapaho, Routt, and Grand Mesa-Uncompahgre. The Department of the Interior, through the [App. XLIX] Bureau of Reclamation, the National Park Service, the Bureau of Land Management, the Bureau of Mines, and the Bureau of Sport Fisheries and Wildlife, make use of water in Water Division No. 5 for national recreational and other purposes. The Department of the Navy administers certain Naval Petroleum and Oil Reserves which, if ever developed, would require water to accomplish the federal purpose for which the reservation was made.

As in the former Water District 37, the United States claims two types of rights in the larger Water Division No. 5: *appropriative* rights acquired pursuant to state law, and *reserved* and other rights based on federal law, resulting principally from withdrawals of land from the public domain.

REASONS FOR GRANTING THE WRIT

This case raises in a somewhat different factual context the same issues involved in *Eagle County*, No. 87, this Term. The statutory water adjudication procedures underlying the decision below, however, are the ones now prevailing in Colorado and will govern future state proceedings affecting the vast water interests of the United States in that state. Because the new procedures are significantly different from the repealed procedures from which *Eagle County* arose, this case complements *Eagle County* in an important way and should also be reviewed by this Court.

Two issues are presented in *Eagle County*. The first is whether the consent to be sued embodied in 43 U.S.C. 666 extends to suits against the United States for adjudication of its reserved water rights not predicated on state law; the second is whether a supplemental water adjudication proceeding under the old state law is the type of general water rights adjudication suit contemplated by the consent statute. The first issue is as squarely presented in this case as in *Eagle County* and needs no elaboration here. See our brief in *Eagle County*, pp. 10–19.

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[1] This footnote omitted here.

The second issue in *Eagle County* is here presented in the context of the new state procedures. While some of the defects of the old law have been eliminated (*e.g.*, each of the 70 districts under the old law encompassed only a small segment of a river system), the new procedures are, if anything, more burdensome on the government and bear no similarity to a general adjudication which, in one suit, establishes the rights of all parties *inter sese. Dugan* v. *Rank*, 372 U.S. 609; *State* v. *Rank*, 293 F.2d 340 (C.A.9) ; *Miller* v. *Jennings*, 243 F.2d 157 (C.A.5). See legislative history set forth in our *Eagle County* brief at pp. 12–15.

[App. L] The new statute contemplates monthly proceedings before a water referee on water right applications. These proceedings do not constitute general adjudications of water rights because all the water users and all water rights on a stream system are not involved in the referee's determinations. The notice of the proceeding is directed only to those parties who may be "interested" in the water applications. The only water rights considered in the proceeding are those for which an application has been filed within a particular month. The only parties before the referee are those who have taken affirmative action to file for a water right or have determined that they "desire" to file a statement in opposition, and even those who have elected to participate are not accorded a hearing on the numerous factual issues these cases necessarily involve. In addition, the Colorado statute, which makes all surface water rights confirmed under the current procedure junior to those awarded in previous district adjudications, necessarily excludes those previously decreed water rights from the consideration of the referee. As a result, the only rights before the referee are those which have arisen since the last water proceeding.

The referee's proceeding is thus extremely limited. It is administrative rather than judicial, and involves only a small part of the water rights and parties in the entire water division. Such a proceeding does not constitute a "general adjudication" as intended by Congress in 43 U.S.C. 666. See *Dugan* v. *Rank*, *supra*, and *Miller* v. *Jennings*, *supra*. And see the discussion in our *Eagle County* brief, pp. 24–30.

* * * * * * *

* * *

Solicitor General.

* * *

OCTOBER 1970.

* * * * * * *

APPENDIX B

IN THE DISTRICT COURT IN AND FOR WATER DIVISION No. 5, STATE OF COLORADO

Case No. Misc. #1

IN THE MATTER OF THE APPLICATION FOR WATER RIGHTS, CHANGES FOR WATER RIGHTS, ETC., FILED IN SAID COURT FOR THE MONTHS OF DECEMBER 1969, AND JANUARY, 1970

ORDER

* * * * * * *

[App. LI] This matter came on for hearing and argument before the Court on the 9th day of April, 1970, upon the motion of the United States to quash service. Appearances were as noted on the title and venue page of this Order.

At the conclusion of the hearing, the matter was submitted for consideration and ruling by the Court.

The grounds of the Government's motion are two:

(1) The proceedings based on said applications do not constitute the kind of water rights adjudication suit with respect to which the United States has consented to be sued.

(2) The purported "service" of the resume does not constitute "service of process" within the meaning and contemplation of 43 U.S.C. Sec. 666 [McCarran amendment].

I

The first ground of the motion has been ruled upon adversely to the Government by the Colorado Supreme Court in an original proceeding. See: The United

States of America v. District Court of Eagle County (The Colorado River Water Conservation District, City and County of Denver, Central Colorado Water Conservancy District, and the New Jersey Zinc Company, Intervenors), —— Colo. —— (1969), 458 P.2d 760.

Certiorari has been issued by the Supreme Court of the United States to the Colorado Supreme Court in that case for a review of its order discharging the rule to show cause why a writ of prohibition should not be issued to the trial court which had ruled that the United States was amenable to its jurisdiction in a supplemental general water adjudication being conducted under the Water Act which has since been superseded (except as to pending proceedings thereunder), by a new and different law known as the Water Rights Determination and Administration Act of 1969, under which these instant proceedings are pending.

The prohibition proceeding in the Colorado Supreme Court was heard and ruled upon under the earlier water law (C.R.S. 1963, 148–9–7).

In our opinion, the *ratio decidendi* of the Colorado Supreme Court is equally applicable to proceedings for which provision is made by the 1969 Act as concerns the Government's contention stated in sub-division (1) of the motion to quash. Perhaps to greater degree, because the jurisdiction of the Court for Water Division No. 5 extends to a much larger area than the former water district which is involved in the case on certiorari and which is now included within Water Division No. 5.

* * * * * * *

[App. LII] III

It might be said that there should be a present suspension of a ruling by this Court upon the motion to quash, inasmuch as the disposition of the original proceeding in the Colorado Supreme Court has been challenged in the highest Court in the land.

We are bound by and must follow, however, the rule of decision as enunciated by the highest Court of this state, while also being bound by the Supremacy Clause of the United States Constitution.[1] When we consider the waiver of immunity created in 43 U.S.C. 666, we do not find in the matter before this Court any conflict with the Supremacy Clause of the Constitution of the United States.

We shall treat the Colorado Water Rights and Determination Act of 1969, as a matter of local concern in which federal sovereign immunity has no place, unless and until the higher Courts of Colorado, or the federal jurisdiction, shall hold otherwise.

For the reasons stated, we must overrule the motion to quash.

It is so ordered.

The Court will entertain, where appropriate, applications by the United States for reasonable extensions of time.

Done at Chambers in the City of Glenwood Springs, Colorado, this 21st day of April, 1970.

* * * * * * *

APPENDIX C

IN THE SUPREME COURT OF THE STATE OF COLORADO

24821

The United States of America vs. the District Court in and for Water Division No. 5, State of Colorado and the Judge Thereof, the Honorable Clifford H. Darrow, and the Water Referee Thereof

Application for Writ in the Nature of Prohibition

ORIGINAL PROCEEDING

Upon consideration of the application of the United States of America for writ in the nature of prohibition, together with the pleadings filed, it is this day ordered that said application be, and hereby is, denied.

BY THE COURT, EN BANC, July 9, 1970.

[App. LIII] [Telegram]

* * * Oct. 21 504PPDT [1970].

Erwin N Griswold,
Office of the Solicitor General of the United States,
Washington, D.C.:

The Agua Caliente band of Mission Indians does hereby request immediate action on your part to have the Eagle River adjudication now pending before United States Supreme Court taken off calendar. This request is predicated upon the fact that irreputable (sic) harm and deprivation of legal rights to our tribe and other Indian Tribes could result therefrom in as much as an adverse decision could give rise to a precedent and subject Indian rights to State courts and laws in such a manner as to obviate the present protective Federal laws and regulations enacted for the benefit and assistance of Indians. Under 43 United States Code 666, there can be no waiver of immunity from suit respecting Indian rights and the failure of the Justice Department to distinguish Indian private rights held in trust by the United States in said Eagle River adjudictaion (sic) from Federal rights held for the benefit of the public constitutes a further threat to the present status of Indians throughout the country.

Larry N Olinger,
Chairman of the Agua Caliente Band
of Mission Indians Tribal Council.
Raymond Simpson,
Suite 406 Security Bank Building,
110 Pine 90802 [Long Beach].

[App. LIV] [Telegram]

Oct. 22 PM 9 35 [1970].

Erwin N Griswold,
Office of the Solicitor General of the United States,
Washington, D.C.:

The Fort Mojave Tribe requests that your office seek to have Eagle River adjudication now pending before the United States Supreme Court taken off calendar. The interest of our Tribe arise from the fact that the Eagle River is a principal tributary of the Colorado River in which we have a vital and continuing interest. Our interest was highlighted by the United States Supreme Court in *Arizona* v. *California* when the court noted that our Tribe possesses prior and preferential rights with the respect to the water of the Colorado River. 70 percent of all the water in the Colorado River lies in the State of Colorado with the Eagle River being the principal tributary. It therefore seems imperative that said Eagle River judication be taken off calendar because our interest and position has not been presented to the court. We are fully aware of the octopus-like tentacles belonging to adverse interests that seek to ignore and destroy our water rights by forcing (?) us under State law. We therefore urgently request that you act upon our request for the matter to be taken off calendar.

Minerva Jenkins,
Chairman,
Fort Mojave Tribal Council.
Raymond C Simpson,
406 Security Bank Building,
110 Pine Ave., L BCH 90802.

[App. LV] Office of the Solicitor General,
Washington, D.C., October 27, 1970.

Mr. Larry N. Olinger,
Chairman, Agua Caliente Band of Mission Indians Tribal Council,
Long Beach, Calif.

Dear Mr. Olinger: I received your telegram of October 22, 1970, expressing your concern about the Eagle River litigation pending in the Supreme Court (Nos. 87 and 812, this Term). In these cases, the Supreme Court of the State of

Colorado ruled (contrary to the contention of the United States) that the courts of that State have jurisdiction to determine all rights to the water of the river, including rights based on federal law. The United States has taken these cases to the Supreme Court for a ruling on our contention that the state courts are without jurisdiction to determine water rights based on federal law (including any Indian rights that may be involved).

If, as suggested in your telegram, the United States were to remove these cases from the Supreme Court calendar, the result would be to leave the determination of water rights based on federal law (including Indian rights) under the jurisdiction of the Colorado courts, rather than the federal courts. We do not understand how this would be beneficial to the interests of your tribe; indeed, we believe it would be harmful to those interests.

As you know, the Department of Justice has important responsibilities for the protection of Indian rights. We are not aware of any Indian water rights directly involved in this litigation, but we would appreciate detailed information concerning how the litigation might affect any Indian water rights of which you are cognizant so that we may advise the Court of them during the argument of the cases.

Very truly yours,

ERWIN N. GRISWOLD,
Solicitor General.

[App. LVI] OFFICE OF THE SOLICITOR GENERAL,
Washington, D.C., October 27, 1970.

Miss MINERVA JENKINS,
Chairman, Fort Mojave Tribal Council,
Long Beach, Calif.

DEAR MISS JENKINS: I received your telegram of October 22, 1970, expressing your concern about the Eagle River litigation pending in the Supreme Court (Nos. 87 and 812, this Term). In these cases, the Supreme Court of the State of Colorado ruled (contrary to the contention of the United States) that the courts of that State have jurisdiction to determine all rights to the water of the river, including rights based on federal law. The United States has taken these cases to the Supreme Court for a ruling on our contention that the state courts are without jurisdiction to determine water rights based on federal law (including any Indian rights that may be involved).

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As you know, the Department of Justice has important responsibilities for the protection of Indian rights. We are not aware of any Indian water rights directly involved in this litigation, but we would appreciate detailed information concerning how the litigation might affect any Indian water rights of which you are cognizant so that we may advise the Court of them during the argument of the cases.

Very truly yours,

ERWIN N. GRISWOLD,
Solicitor General.

[LVII] OFFICE OF THE SOLICITOR GENERAL,
Washington, D.C., November 6, 1970.

Miss MINERVA JENKINS,
Chairman, Fort Mojave Tribal Council,
Needles, Calif.

DEAR MISS JENKINS: I received your telegram of November 4, 1970, yesterday, and I am grateful for its clarification of your views with respect to the Eagle River litigation (Nos. 87 and 812, this Term).

Your attorney, Mr. Raymond C. Simpson, conferred with Mr. Lawrence G. Wallace of my staff about this matter today. Mr. Wallace found Mr. Simpson's suggestions most helpful; and Mr. Simpson promised to furnish us additional materials and information for use in the future briefing and argument of these cases, which we very much appreciate.

Please be assured that the government intends to make the Supreme Court fully aware of its obligations as trustee of Indian rights in this matter, and of any bearing that the decision may have on those rights.

Very truly yours,

ERWIN N. GRISWOLD,
Solicitor General.

[App. LVIII] *Friday, November 13, 1970.*

SUPREME COURT OF THE UNITED STATES

Present: Mr. Chief Justice Burger, Mr. Justice Black, Mr. Justice Douglas, Mr. Justice Harlan, Mr. Justice Brennan, Mr. Justice Stewart, Mr. Justice White, Mr. Justice Marshall, and Mr. Justice Blackmun.

Orders in Pending Cases

* * * * * * *

No. 87. United States, petitioner, v. District Court in and for the County of Eagle and State of Colorado et al.; and

No. 812. United States, petitioner, v. The District Court in and for Water Division No. 5, State of Colorado, et al. The application of the Solicitor General, consented to by all parties concerned, for a stay of the Colorado State Court proceedings before the District Court in and for Water Division No. 8, (sic) presented to Mr. Justice White, and by him referred to the Court, is granted insofar as such proceedings involve an adjudication of the rights of the United States, pending the decision of this Court in No. 87 and in No. 812 presently pending on a petition for a writ of certiorari.

[App. LIX] FORT MOJAVE TRIBAL COUNCIL—CALIFORNIA-ARIZONA-NEVADA,
Needles, Calif., November 16, 1970.

Mr. PAT PATENCIO,
587 South Palm Canyon Drive,
Palm Springs, Calif.

DEAR MR. PATENCIO: I am enclosing a copy of a letter I have sent to the Navajo, Southern Ute, Ute Mountain, Uintah and Ouray, Chemehuevi, Hualapai, Havasupai, Colorado River, Cocopah and Quechan Tribes concerning the Eagle River case now before the Supreme Court.

As chairman of the group that met in Phoenix, you can be of help to us by getting together a meeting to discuss the need for having Indian interests advocated now, without waiting for legislation which may come too late for many of the cases that are pressing now; the legislation may never be passed and we need to face that fact.

Will you please distribute my letter to other tribes and consider setting up a meeting such as suggested?

Sincerely yours,

Mrs. MINERVA JENKINS,
Chairman.

[LX] FORT MOJAVE TRIBAL COUNCIL,
Needles, Calif., November 16, 1970.

DEAR MR. CHAIRMAN: The purpose of this letter is to call to your attention the case, Eagle River Adjudication, Nos. 87 and 812, pending in the supreme Court this term. This is an important matter that is of vital interest to Indian tribes that have rights to water of the Colorado River. In its broader aspects it should also be of interest to other tribes.

The Eagle River in Colorado is a tributary of the Colorado River. The Supreme Court of the State of Colorado had ruled in two cases that the State courts of Colorado have jurisdiction to determine all rights to the water of the Eagle River, including rights based on Federal law.

The Solicitor General in the Department of Justice, acting on behalf of the United States, has taken these cases to the Supreme Court.

In doing this, though, the Justice Department did not assert the private rights of Indians held in trust by the United States; instead, it asserted the interests of the Government and attempted to join Indian interests with the Government interests.

You will recall that in his July 8 message to the Congress, the President in condemning the conflict of interest within the Justice and Interior Departments, pointed out very clearly that the rights of Indians and the rights of the United States are not one and the same thing. The President made the distinction in these words:

"The Secretary of the Interior and the Attorney General must at the same time advance *both* the *national* interest in the use of land and water rights *and* the *private* interests of Indians in land which the Government holds as trustee." (Emphasis by the President)

After an exchange of correspondence with Mr. Ervin Griswold, the Solicitor General, Department of Justice, the Fort Mojave Tribe has been given the [App. LXI] opportunity to make our interests in the *Eagle River* case known to the Justice Department prior to the argument of the case before the Supreme Court.

Tribes that have interests in water of the Colorado River and its tributaries are urged to join our Tribe by having your attorneys make your concern known to Mr. Griswold.

Other tribes should, if they share our view, let the President and the Vice President know that the Justice Department did not in this case, except upon prompting by us, recognize the distinction between the Government's and the Indians' interests. This case provides a good example of the need for the Indian Trust Counsel Authority legislation the President proposed; but, it also points out very dramatically the need for immediate Executive action to assure advocacy now for the Indian interests.

Sincerely yours,

MINERVA JENKINS,
Chairman.

[App. LXII] RAYMOND C. SIMPSON,
Long Beach, Calif., November 20, 1970.

Re Eagle River Litigation.

Mr. ERWIN N. GRISWOLD,
Office of the Solicitor General,
Washington, D.C.

Attention: Mr. Wallace.

GENTLEMEN: Let me thank you for the courtesy extended me during my trip of a couple of weeks ago to Washington, D.C.

The primary purpose in writing this letter is to confirm my understanding that you agree with my basic position that Indian lands are privately owned lands held in trust by the United States of America for the benefit of the Indians, which, of course, means they are not embraced within the purview of statutes governing public lands. For this reason, it is critically important that the Supreme Court by (sic) made cognizant to the fact that an adverse decision in cases No. 87 or 812 for this term would result in an unjustifiable servitude upon the privately owned land and water of Indians. In other words, Indian trust lands cannot be permitted to come under state court jurisdiction in any determination of the Indian rights therein without resulting in a great loss and unrepairable damage with disastrous consequences to the Indians.

In keeping with my representation to you, and with my understanding that the cases will not be argued for three or four months, I will be transmitting a written statement pertaining to the Indian interest in the above-entitled litigation in the very near future.

Very truly yours,

RAYMOND C. SIMPSON.

[LXIII] RAYMOND C. SIMPSON,
Long Beach, Calif., November 28, 1970.

Re Fort Mojave Indian Rights in Eagle River Adjudication—American Indian crisis on the Colorado River.

Hon. IRWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C.

DEAR SIR: This will refer to my letter to you dated November 20, 1970, in regard to the above entitled matter. That letter specifically raised the issue of the threat stemming from failure to bring to the Supreme Court's attention the fact that Indian rights to the use of water are private in character and held in trust for the Indians, with the United States as trustee. Secondly, in view of that fact the waiver of sovereign immunity set forth in 43 U.S.C. 666 could not possibly have any application to those Indian rights. In the paragraphs which succeed the general objections to the present posture of the cases here involved will be discussed in more detail. By reason of earlier discussions with a representative of your office, I have not felt it essential to do more than present the objections to the cases in question by the Fort Mojave Indian Tribe without going into extensive detail in connection with the proceedings in the District and Supreme Court of the State of Colorado which gave right (sic) to the review of those matters by the Supreme Court of the United States.

In that letter I referred to the case entitled: United States Petitioner v. The District Court in and for the County of Eagle and State of Colorado in the Supreme Court of the United States "No. 87, October Term 1970". Subject matter of the case originally initiated in the State Court of Eagle County, Colorado, are the rights to the use of water for the Eagle River. It is a principal tributary of the Colorado River within the State of Colorado.

Reference is also made to the Petition for a Writ of Certiorari filed October 7, 1970, by the United States. That case is entitled United States of America, Petitioner v. The District Court in and for Water Division No. 5, State of Colorado * * * No. 812, October Term 1970. Subject matter of the case as described in the Petition for a Writ of Certiorari are the rights for the use of water in Water Division No. 5. That water division encompasses the Eagle River referred to above and also according to the Petition of the United States * * * "the area drained by the Colorado River and its tributaries (excluding the Gunnison River)", * * *.

【App. LXIV】 Succinctly stated, Water Division No. 5 recently established by the State of Colorado for the adjudication and administration of rights to the use of water under the jurisdiction of the State and its Courts. You chronicle the many and various agencies of the United States claiming rights to the use of water in that all important and large area which produces an extremely high proportion of the water supply of the Colorado River. As set forth in the Petition, those Federal Agencies include (1) the Department of the Interior; Bureau of Reclamation, National Park Service, Bureau of Land Management, Bureau of Mines, Bureau of Sports, Fishery and Wild Life. (2) the Department of Agriculture; Forest Service. (3) The Department of the Navy which administers the naval petroleum and oil reserves. It is also stated in the Petition involving Water Division No. 5 that as in the Eagle River adjudication, Case No. 87, the United States claims appropriative rights pursuant to state law and also reserved and other rights to the use of water based upon Federal law.

FORT MOJAVE TRIBE HAS DIRECT AND IMMEDIATE INTEREST IN THE SUBJECT MATTER OF CASES NO. 87 AND 812—IS GRAVELY THREATENED BY OMISSION OF INDIAN INTEREST IN THEM

Since time immemorial the Mojave Indians have beneficially used the waters of the Colorado River to provide for their sustenance. That water is no less a part of their lives and heritage than the air they breathe. In fact, so significant is this that the origin of their Indian name "Aha-Ma-Cave" has been determined by outstanding anthropologists and archaeologists to mean "People of the River".

The Fort Mojave Tribe has had decreed to it the rights of the use of water from the mainstream of the Colorado River to irrigate a total of 18,974 irrigable acres. Their legal rights to the use of water for that acreage accords to them an entitlement of 122,640 acre feet of water annually. Recovery of possession of a very substantial irrigable acreage within the Fort Mojave Indian Reservation is expected which will materially increase their irrigable acreage with an attendant enhancement of their legal entitlement from the mainstream of the Colorado River as decreed to them in the case of *Arizona* v. *California*, 373 U.S. 549 (1963).

It is understood that 70% of all the waters flowing to the Fort Mojave Indian Reservation of the mainstream of the Colorado River arises in the State of Colorado. A large proportion of that water has its source within Water Division No. 5 which is involved in case No. 812. A very substantial part of that water so essential to the Fort Mojave Indians is the Eagle River, which is the subject of the adjudication in case No. 87.

Of necessity the Fort Mojave Indian Tribe must have asserted its rights in the tributaries to the mainstream of the Colorado for without the water from those tributary streams, and particularly those in Water Division [App. LXV] No. 5 and Eagle River, its rights would be most seriously invaded. Without those sources of water the Mojave rights would, of course, be vacuous as the entitlement in the mainstream of the Colorado River held by the Mojave is totally dependent upon the water supplied by the tributaries.

FORT MOJAVE INDIAN TRIBE THREATENED BY SHORTAGE OF WATER IN THE COLORADO RIVER AND THE POLLUTION OF THAT STREAM

Any decree which might be entered in either the Eagle River Adjudication or in Water Division No. 5 can have no other effect than to establish uses of the waters within those tributary areas. That upstream use will materially reduce of quantities of water entering the Colorado River which would otherwise flow to the Fort Mojave Indian Reservation. It is a matter of indisputable record that the Colorado River has been most seriously over-appropriated. Water yields from the Colorado River reaching the Fort Mojave Indian Reservation fall far short of the anticipated flows when the River was originally apportioned between the Upper and Lower Basins of the Colorado.

A threat equally serious to the Fort Mojave Indians as the grave shortage of water now confronting them is the pollution of that stream. Salinity has increased very rapidly in the Colorado River due to reservoir evaporation losses and the salts which enter that River under present development. Projects are now building—particularly the Central Arizona Project—which constitute an even greater threat both as to quantity and quality of the water if those projects proceed to completion.

As a consequence, any reduction of water in the Colorado River by reason of tributary uses and Water Division No. 5 creates an intolerable situation. Manifestly the decrees in the State of Colorado must be entered in contemplation of the fact that the Fort Mojave Indian Tribe, and indeed many other tribes within the Colorado River drainage, hold legal rights to the use of water, which rights must be protected.

FORT MOJAVE INDIANS' RIGHTS IN THE COLORADO RIVER AND ITS TRIBUTARIES—PRIVATE INTERESTS IN REAL PROPERTY HELD IN TRUST FOR THEM BY THE UNITED STATES

It is of course elemental that the rights to the use of water by the Fort Mojave Indian Tribe and the Colorado River and its tributaries are interests in real property of the highest dignity. Those rights, as asserted above, although in the mainstream of the Colorado River, necessarily extend to the sources of water which are the tributaries of that stream including in patricular the mainstream and the tributaries in Water Division No. 5 and, of course, the Eagle River.

President Nixon in his July 8, 1970, Message to the Congress, stressed that the American Indian rights to the use of water are "private" in character, held in trust for them by the United States. The Mojave [App. LXVI] rights are not "public" in character. They are distinct and separate from the rights claimed and administered by the agencies of the Department of the Interior, Agriculture, and Navy alluded to in the Petition for Certiorari and Water Division No. 5. That distinction is also of course equally applicable to the Eagle River Adjudication in which the only claims asserted by the United States pertain to the Forest Service and the Bureau of Land Management.

FAILURE IN EAGLE RIVER ADJUDICATION NO. 87 PROPERLY TO ASSERT OR IDENTIFY THE INDIAN RIGHTS TO THE USE OF WATERS IN THAT STREAM AS BEING HELD IN TRUST FOR THE FORT MOJAVE INDIANS

There has been a failure to distinguish or to indeed make reference to the private rights of the Fort Mojave Indians in the Eagle River Adjudication. A similar omission is likewise made in the Petition for Certiorari in the Water Division No. 5 Case No. 812.

That failure is all pervasive. It is exemplified in this quoted excerpt from the Petition of Certiorari filed in that case: "Reserved rights (of the United States) have been defined by this Court as the entitlement of the United States to use as much water from sources on land withdrawn from the Public Domain as is necessary to fulfill the purposes for which the lands were withdrawn, subject only to the water rights vested as of the date of the withdrawal. Arizona v. California, 373 U.S. 546, 595–601", Petition for Writ of Certiorari**Case No. 87, p. 3. That paraphrasing of the decision of Arizona v. California last cited is most critical to the Fort Mojave Tribe. Most assuredly the Mojave rights are not an "entitlement of the United States to use**" water. Rather as the citation when considered in context revealed that the Mojave and other Indian rights to the use of water are recognized and distinguished from those of the United States for public purposes.

Again failure to establish the all important difference between the "private" rights of the Indians held in trust for them by the United States from those of the Federal Government held for the public as a whole is this statement from the brief filed with the Supreme Court: "As indicated previously**the United States unquestionably has the right to use as much water from sources on lands withdrawn from the Public Domain as is necessary to fulfill the purposes for which the lands were withdrawn**". Not only is the statement incorrect, it is to be noted that there are four cases cited in the brief to support the contention. Three of the cases relate exclusively to Indian rights and the fourth relates predominantly to Indian rights. Brief for the United States, Case No. 87, p. 10, all of which underscores the imperative need clearly to distinguish the Indian rights from those of the public.

In keeping with the tone and temper of the erroneous excerpt quoted from the Petition of Certiorari and the briefs filed in case No. 87 is this excerpt taken from the Petition and paraphrased in the brief: "The magnitude of the problem is indicated by the fact that about four hundred forty-three million acres have been withdrawn from the Public Domain for use as Indian [App. LXVII] reservations, national parks, national forest, national recreation areas, national monuments, etc." Petition for Certiorari**P. 10–11. Failure to separate and distinguish the lands of the American Indians from the public lands evidences the incorrect position which has been presented to the Supreme Court in regard to the private interests of the Indian. From the legal aspects of the matter an intolerable circumstance is presented not only for the Fort Mojave Indian Tribe but also for all American Indians whose lands and rights to the use of water are in effect intermingled with the "reserve" lands and rights to the use of water for the public at large.

FAILURE TO ASSERT IN CASES NOS. 87 AND 812 THAT THE WAIVER OF SOVEREIGN IMMUNITY FROM SUIT IN 43 U.S.C. 666 DID NOT INCLUDE THE RIGHTS TO THE USE OF WATER OF THE FORT MOJAVE TRIBE OF INDIANS OR INDEED THE RIGHTS OF ANY OTHER INDIANS—A MOST SERIOUS THREAT TO THE INDIANS

Gravest consequence to the Fort Mojave Tribe of Indians will necessarily ensue by the failure of the petitions for certiorari and the brief in the Eagle River Adjudication to emphasize to the Supreme Court that the waiver of sovereign immunity from suit in 43 U.S.C. 666 does not in any way pertain to the Indian rights and (sic) to the use of water. It is basic law that unless the Indian immunity from suit is specifically waived by the Congress that immunity is unimpaired. From the language of 43 U.S.C. 666 it is abundantly manifest that the Congress did not intend to include the rights of the American Indians within the scope of that waiver. If construction of the Act were permissible, which is denied, the legislative history would result in the rejection of any concept as to the applicability of the Act to the Indian rights and interests.

Failure to distinguish the Indian rights from the public rights of the Federal Government might very well result in a decision by the Supreme Court that could be construed as embracing those rights within 43 U.S.C. 666. Quite clearly that would be intolerable to the Indians. The result might be to subject the rights of the American Indians to the administration of the state under the laws of the states. Because of the state laws governing rights to the use of water are frequently incompatible with the laws which govern the Indian rights to the use of water, the extreme prejudice to the Indian rights is clear beyond question. In short, the repeated failure to bring to the Supreme Court's attention the disparity between the laws governing the Indian rights and the laws governing the public rights of the United States could result in serious impairment or extinguishment of the Indian rights. It is not an over statement to declare that the Indian lands to a large extent would become uninhabitable if those rights were seriously infringed upon or, as stated, extinguished.

SUGGESTION TO THE SUPREME COURT OF COLORADO THAT THE UNITED STATES WOULD VOLUNTARILY APPEAR AS PLAINTIFF IN STATE COURT PROCEEDINGS WHOLLY UNACCEPTABLE TO THE FORT MOJAVE INDIAN TRIBE IN THE PRESENT STATE OF THE RECORD

[App. LXVIII] It was expressly stated by the United States when it was before the Supreme Court of Colorado in the Eagle River Adjudication that it might be willing to appear in the State Court as plaintiff. Any action of that character would, of course, be objectionable to the Fort Mojave Indian Tribe for exactly the same reasons that it has interposed objection by this letter in connection with the brief and petitions of certiorari which have been discussed above. Clearly the interests of the Fort Mojave Tribe would be prejudiced if the United States undertook to appear as plaintiff and failed fully to assert the Indian rights in the tributary streams of the Colorado River. Moreover in the ultimate if the United States were to subject itself to the jurisdiction of the State Court, all of the rights which are involved and there presented would probably be subject to state law and the control and administration of state officials. That circumstance would, as stated, be intolerable to the Indians.

I intend to be in Washington for conferences with officials of the Department of the Interior during the week of December 7, 1970. At that time I would greatly appreciate an opportunity to meet with you and members of your staff. We could then discuss fully the objections which the Fort Mojave Indian Tribe and other tribes adversely affected have to the present situation in the cases to which this letter is directed in order to determine what affirmative action should be taken to protect the Indian rights involved.

Yours very truly,

RAYMOND C. SIMPSON,
Fort Mojave Tribal Attorney.

[App. LXIX] RESOLUTION

(Res. No. 70–23)

FORT MOJAVE TRIBE OF THE FORT MOJAVE RESERVATION, CALIFORNIA, ARIZONA, AND NEVADA

Whereas, the Fort Mojave Indian Tribe of the Fort Mojave Indian Reservation has a long established policy with the objective of protecting and preserving the Tribe's rights to the use of water in the Colorado River and their entitlement to water both as to quality and quantity, and

Whereas, the Tribe in furtherance of that policy directed its Attorney Raymond C. Simpson to take appropriate steps in regard to protecting the Tribe's rights in the Colorado River and its tributaries as they may be affected by the case of United States v. District Court of Eagle County, Colorado case No. 87 now before the Supreme Court and the case entitled United States v. District Court for water Division No. 5, No. 812 concerning which the United States is now seeking review by the Supreme Court: Now therefore

The Tribal Council having fully considered the letter dated November 28, 1970 directed to the Hon. Erwin N. Griswold, Solicitor General, Department of Justice, which letter was prepared by the above mentoned Attorney Raymond C. Simpson, does hereby approve that letter to which this resolution is attached and hereby directs the foresaid Raymond C. Simpson to proceed in conformity with that letter to take all steps necessary to preserve and protect the Tribe's rights in the Colorado River and its tributaries as they relate to the above mentioned cases including but not limited to attending the proposed conference with the Solicitor General and for all other purposes.

CERTIFICATION

We, the undersigned, as the chairman and the secretary, hereby certify that the Fort Mojave Tribal Council is composed of six members, of whom five, constituting a quorum, were present at a special meeting on the 30th day of November and that the foregoing resolution was adopted by five affirmative votes.

FORT MOJAVE TRIBAL COUNCIL,
MINERVA JENKINS, *Chairman.*
JEANNETTE OTERO, *Secretary.*

[App.LXX] OFFICE OF THE SOLICITOR GENERAL,
Washington, D.C., December 3, 1970.

RAYMOND C. SIMPSON, Esq.,
Suite 406 Security Bank Building,
Long Beach, Calif.

DEAR MR. SIMPSON: Thank you very much for your letter to the Solicitor General of November 28, 1970, which we received today. As anticipated in our earlier conversation, the information and views contained in your letter will be helpful in our handling of the Eagle River cases.

The Solicitor General has asked me to handle this matter and to keep him informed about it. I will be happy to see you when you are in Washington during the week of December 7, 1970. The latter part of the week (either Thursday or Friday) will be more convenient for me since I am arguing a case in the Supreme Court on Wednesday (according to the Court's tentative schedule).

Yours sincerely,

LAWRENCE G. WALLACE,
Deputy Solicitor General.

[App. LXXI] RAYMOND C. SIMPSON,
Long Beach, Calif., December 11, 1970.

Re Fort Mojave Indian Rights in Eagle River Adjudication—American Indian crisis on the Colorado River.

HON. IRWIN N. GRISWOLD,
Solicitor General, Department of Justice,
Washington, D.C.

DEAR SIR: On behalf of the Fort Mojave Tribe, I wish to thank you for the courtesy extended by Mr. Clark of your office during my recent visit to Washington. At that time we discussed in detail the contents of my letter addressed to you dated November 28, 1970, and thereafter expressed a wish to file an Amicus Brief respecting our position in the Eagle River Adjudication.

Hence, pursuant to the suggestion of Mr. Clark, I request that you consider this letter as constituting the formal request of the Fort Mojave Tribe for you (sic) consent to file an Amicus Brief in consolidated cases 87 and 812 involving the Eagle River litigation presently pending in the United States Supreme Court.

Thanking you in advance for your anticipated cooperation and permission.

Very truly yours,

RAYMOND C. SIMPSON,
Tribal Attorney.

[App. LXXII] [Telegram]

(Duplicate and corrected copy)

DECEMBER 14, 1970.

Commissioner LEWIS BRUCE,
Bureau of Indian Affairs,
Washington, D.C.

Mojave Indian Tribe request assistance from Mr. Veeder in Eagle River adjudication and in water division number 5 adjudication arising in State of Colorado and his authorization to cooperate with me in regards to that litigation. Shortage of time makes this assistance and authorization imperative immediately.

RAYMOND C. SIMPSON,
Tribal Attorney,
Fort Mojave Indians.

[App. LXXIII] WILKINSON, CRAGUN & BARKER,
Washington, D.C., December 22, 1970.

Re Eagle River Adjudication (No. 87) and Water Division No. 5 Adjudication No. 812) in the State of Colorado.

HON. IRWIN N. GRISWOLD,
Solicitor General, Department of Justice,
Washington, D.C.

DEAR MR. SOLICITOR GENERAL: We are attorneys for the Arapahoe Tribe of the Wind River Reservation, Wyoming, the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, the Hoopa Tribe of the Hoopa Valley Reservation, California, the Quinault Tribe of Washington, the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota, and the National Congress of American Indians. We have become aware of the Eagle River adjudication (No. 87) and Water Division No. 5 adjudication (No. 812) which are presently pending before the Supreme Court of the United States. The above named tribes as well as the National Congress of American Indians, are gravely concerned that important questions affecting Indian water rights have been raised in the cases without a proper statement of the Indian position on these questions.

We have been supplied with a copy of the letter to you from Mr. Raymond C. Simpson, dated November 28, 1970. We support the general premises urged therein—that the United States has heretofore failed to distinguish the particular "private" rights of Indians to the use of water from rights claimed and administered by various federal agencies characterized as "reserved" rights of the United States. We request that in future briefs filed by the United States in [App. LXXIV] these cases the United States call the attention of the Supreme Court to the error in the statements heretofore made in the briefs filed in Docket No. 87. Moreover, it should be made plain to the Court that, irrespective of its effect on water rights of the United States, Congress never intended in 43 U.S.C. 666 to waive the sovereign immunity of Indian tribes from suit and subject them to the vagaries of state court proceedings with respect to their water rights.

We are advised by Mr. Simpson that he has been invited to file an *amicus* brief on behalf of the Fort Mojave Tribe of Indians. In addition, we understand that it was agreed that Mr. Simpson would submit a memorandum to the Department of Justice and it would be considered before further briefs in these cases are filed by the United States.

Because of the extreme importance of these matters, we would like the opportunity to discuss the Indian water rights questions raised with your staff prior to the completion and filing of any further briefs in these cases.

Sincerely yours,

GLEN A. WILKINSON.

[App. LXXV] WILKINSON, CRAGUN & BARKER,
December 22, 1970.

Re Eagle River Adjudication and Water Division No. 5 Adjudication.

Hon. LOUIS R. BRUCE,
Commissioner, Bureau of Indian Affairs,
Washington, D.C.

DEAR COMMISSIONER BRUCE: We are attorneys for the Arapahoe Tribe of the Wind River Reservation, Wyoming, the Hoopa Tribe of the Hoopa Valley Reservation, California, the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota, the Quinault Tribe of the Quinault Reservation, Washington, the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, and the National Congress of American Indians. As you are no doubt aware, the Supreme Court has granted *certiorari* in the Eagle River adjudication (No. 87) and the Water Division No. 5 adjudication (No. 812), both in the state of Colorado. Both of these cases involve questions which might seriously affect Indian water rights.

We hope to work with the Department of Justice to assure that the position of the Indians is not neglected in these briefs. In that regard, we hereby request assistance from Mr. William Veeder in our work concerning the Eagle River adjudication and the Water Division No. 5 adjudication. Furthermore, we request that he be authorized to cooperate with us on that litigation. We enclose a copy of a letter we have sent today to the Solicitor General concerning these cases.

Since the writ of *certiorari* was granted in Water Division No. 5 adjudication on December 7, 1970, time is of the essence. We look forward to hearing from you on this matter very soon.

Sincerely yours,

GLEN A. WILKINSON.

Enclosure.

[App. LXXVI] [Filed January 14, 1971]

No. 812

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1970

UNITED STATES OF AMERICA, PETITIONER *v.* THE DISTRICT COURT IN AND FOR WATER DIVISION NO. 5, STATE OF COLORADO, AND THE JUDGE THEREOF, THE HONORABLE CLIFFORD H. DARROW, AND THE WATER REFEREE THEREOF

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF COLORADO

BRIEF FOR THE UNITED STATES

* * * * * * *

QUESTIONS PRESENTED

[See *supra* this APPENDIX, page 1]

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STATUTES INVOLVED

[See *supra* this APPENDIX, pages 1 & 2]

* * * * * * *

The Colorado Water Right Determination and Administration Act of 1969, Colo. Rev. Stat. 148–21–1 *et seq.*, provides in pertinent part:

148–21–3. Definitions.—(1) For the purposes of this article, unless the context clearly indicates a different meaning:

(2) "Person" means an individual, a partnership, a corporation, a municipality, the state of Colorado, the United States of America, or any other legal entity, public or private.

* * * * * * *

148–21–18. Applications for water rights or changes of such rights—plans for augmentation—(1) Any person who desires a determination of a water right or a conditional water right and the amount and priority thereof, including a determination that a conditional water right has become a water right by [App. LXXVII] reason of the completion of the appropriation, a determination with respect to a change of a water right, approval of a plan for augmentation or biennial finding of reasonable diligence, shall file with the water clerk in duplicate a verified application setting forth facts supporting the ruling sought. Any person who wishes to oppose the application may file with the water clerk in duplicate a verified statement of opposition setting forth facts as to why the application should not be granted or why it should be granted only in part or on certain conditions. Such statement of opposition must be filed by the last day of the second month following the month in which the application is filed. The fee for filing an application shall be twenty-five dollars; and for filing a statement of opposition, the fee shall be fifteen dollars.

* * * * * * *

(4) The referee without conducting a formal hearing shall make such investigations as are necessary to determine whether or not the statements in the application and statements of opposition are true and to become fully advised with respect to the subject matter of the applications and statements of opposition. The referee shall consult with the appropriate division engineer and may consult with the state engineer, the Colorado water conservation board, and other state agencies.

* * * * * * *

148–21–22. Priorities junior to prior awards—when.—With respect to the divisions described in section 148–21–8, priorities awarded in any year for water rights or conditional water rights shall be junior to all priorities awarded in previous years and junior to all priorities awarded in decrees entered prior to the effective date of this article or in decrees entered in proceedings which are pending on such date; * * *.

STATEMENT

This case raises essentially the same issues involved in *United States* v. *The District Court in and for the County of Eagle and State of Colorado*, No. 87, this Term, certioria granted, 397 U.S. 1005, but in the context of the Colorado Water Right Determination and Administration Act of 1969, Colo. Rev. Stat. 148–21–1 *et seq.*, which has superseded the statutory provisions underlying the *Eagle County case.*

* * * * * * *

* * * [App. LXXVIII] Because of the size of new Water Division No. 5, however, the water rights of the United States involved in this case are more numerous than those involved in *Eagle County.*[2] The Forest Service administers four separate national forests in the area: the White River, Arapaho, Routt, and Grand Mesa-Uncompahgre. The Department of the Interior—through the Bureau of Reclamation, the National Park Service, the Bureau of Land Management, the Bureau of Mines, and the Bureau of Sport Fisheries and Wildlife—uses water in Water Division No. 5 for recreational and other purposes. The Department of the Navy administers certain Naval Petroleum and Oil Reserves in the area which, when developed, would require water to accomplish the federal purpose for which the reservation was made.

SUMMARY OF THE ARGUMENT

We rely primarily on our brief submitted in *Eagle County, supra*, No. 87, this Term, and limit our discussion here to the significance of the changed Colorado water right adjudication procedures. In support of our arguement that Congress did not consent to the adjudication of federal *reserved* water rights in state court proceedings, we point out that under the limited procedures of the 1969 Colorado Act, Colo. Rev. Stat. 148–21–1 *et seq.*, it is highly unlikely that the federal reserved rights will be recognized. Because Congress was undoubtedly aware of the fundamental inconsistency between reserved water rights existing under federal law and appropriate water rights—which the laws of the western states are designed to determined and protect—we submit that Congress plainly did not intend through the enactment of 43 U.S.C. 666 to jeopardize federal reserved rights by subjecting them to state adjudications, but intended merely to submit federal claims arising under state law to state procedures.

In Part II, we show that the monthly proceedings of limited scope authorized by the 1969 Colorado statute do not constitute the type of general adjudication to which the United States may be made a party under the federal consent statute.

ARGUMENT

* * * * * * *

Section 148–21–22 of the 1969 Act provides:

> Priorities junior to prior awards—when.—With respect to the divisions described in section 148–21–8, priorities awarded in any year for water rights or conditional water rights shall be junior to all priorities awarded in previous years and junior to all priorities [App. LXXIX] awarded in decrees entered prior to the effective date of this article or in decrees entered in proceedings which are pending on such date; * * *

This provision would appear to foreclose as to all unadjudicated federal reserved—as well as appropriative—water rights, the recognition of pre-1969 priority dates. There thus appears to be no means under the 1969 Colorado statute for perfecting federal reserved water rights. This re-emphasizes our submission that an interpretation of 43 U.S.C. 666 as embodying consent to reserved water right adjudication might effectively eliminate federal reserved rights and drastically affect the management of federal lands in Colorado and other western states.[3]

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[2] This footnote omitted here.

[3] To the best of our knowledge, none of the reserved water rights claimed by the United States in Water Division No. 5 relate to Indian lands. In the event this Court should rule that 43 U.S.C. 666 subjects federal reserved rights in general to state adjudication, there would remain the further question (not presented by this case) whether the consent statute covers water rights held by the United States in trust for specific Indian tribes—frequently pursuant to treaty—rather than for the benefit of the general public

II

The Monthly Proceedings Authorized By The Colorado Water Right Determination And Administration Act of 1969 Are Not Suits To Which The United States Has Consented To Be Joined Under 43 U.S.C. 666 Regardless Of The Nature Of The Rights Claimed By The United States

Again, we rely primarily on our *Eagle County brief*, in which we argued at pages 24–30 that the Colorado procedures there at issue did not provide for the type of adjudication proceedings covered by 43 U.S.C. 666. In our view, however, the new state procedures authorized by the 1969 Act to determine and administer water rights are even more clearly not within the scope of the federal consent statute than the procedures they supersede.[4]

The federal courts which have construed 43 U.S.C. 666 have concluded that Congress intended to waive the sovereign immunity of the United States only in general water right adjudications. See *Dugan* v. *Rank*, 372 U.S. 609, 618–619; Miller v. Jennings, 243 F.2d 157, 159 (C.A. 5), certiorari denied, 355 U.S. 827; *Eagle County* Br. 25–27. The essential elements of the proceedings to which the [App. LXXX] United States has consented to be joined as a defendant, as described in these decisions as well as in the legislative history of the federal statute (see our Brief in No. 87, pp. 12–15), are that all the water users and all the water rights on a stream must be joined in the action before the court and all the rights of the parties be determined as between themselves. These elements constitute the essence of a "general adjudication."

The proceedings under the 1969 Act do not approach such a general adjudication. The only water rights involved in the monthly proceedings before the water referee are those for which an application was made during the preceding month and which are listed on the resume prepared by the water clerk. Section 148–21–18. The Act does not require that all or any particular number of claimants to water from a particular or common source be joined, nor does it provide for a determination *inter sese* of such claims. Neither the statute nor the notice thereunder demands or requires that the United States or any other water user in a division file an application or claim in order that it can be determined along with all others or even those included in the notice. Instead, the statute provides only that (Colo. Rev. Stat. 148–21–18(1)):

> Any person who wishes to oppose the application may file with the water clerk in duplicate a verified statement of opposition setting forth facts as to why the application should not be granted or why it should be granted only in part or on certain conditions.

The result of the application and permitted response is that a water referee will consider the particular month's applications and any statements in opposition filed and, without holding a formal hearing, make his ruling.[5]

In the instant case, the notice of applications filed during the month of December 1969 in Water Division 5 and mailed to the Attorney General contained 17 applications (App. 17–25). These 17 applications and any oppositions filed thereto delimit the subject matter of the proceedings before the referee pursuant to this notice. The proceeding is thus limited to a mere fraction of the rights and claimants to water from sources within the area of Water Division 5. Were the United States to respond to the December notice and file a statement in opposition, the result would not be a decree finally determining all of the rights to use water in the division among all claimants, but a ruling pertaining only to those 17 applications filed. As noted above (*supra*, p. 12), in response to this notice the United States is neither asked nor [App. LXXXI] permitted to submit its claims. For the claims of the United States to be the subject of a decree, the United States must affirmatively initiate a proceeding by filing an application for a water right under Section 148–21–18.

Respondents may assert that there are compelling reasons why the United States should, as a matter of policy, voluntarily submit its claims to state courts for determination.[6] That question, however, is not before the Court since 43 U.S.C. 666 is clearly not a statute directing the Department of Justice to initiate proceedings on behalf of the United States, but simply permits joinder of the United

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[4] One defect of the old procedures has been mitigated, however, since each of the seven new divisions is obviously more likely to encompass a stream system within the meaning of 43 U.S.C. 666 than were any of the 70 districts under the old law.

[5] Under Section 148–21–19(2), the referee has the option of referring the matter to the water judge without making a ruling.

[6] See the brief of the State of Wyoming as *amicus curiae* filed in Eagle County, No. 87, this Term. The *amicus* briefs of other states make similar suggestions.

States as a defendant in proper suits. We submit that the limited monthly adjudication proceedings established by the 1969 Act are not the type of suits covered by the federal consent statute.

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Solicitor General.

* * *

JANUARY 1971.

[App. LXXXII] JANUARY 19, 1971.

[Memorandum]

To: William H. Veeder.
From: Leon F. Cook, Acting Director, Economic Development.
Subject: Requests for assistance and direction as to requests, in regard Eagle River Adjudication and Water Division No. 5, Cases Nos. 87 and 812 before the Supreme Court.

Attached are copies of responses to requests from attorneys for the Fort Mojave Tribe of Indians and the Arapahoe Tribe of the Wind River Reservation, Wyoming, the Hoopa Tribe of the Hoopa Valley Reservation, California, the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota, the Quinault Tribe of the Quinault Reservation, Washington, the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, and the National Congress of American Indians.

In accordance with those responses you are directed to undertake an in-depth analysis of the facts and law respecting those cases as they relate to (1) overall precedents as to American Indian rights to the use of water; (2) American Indian rights in the Colorado River drainage system.

LEON F. COOK.

Attachments.

[App. LXXXIII] U.S. DEPARTMENT OF THE INTERIOR,
Washington, D.C., January 21, 1971.

MR. GLEN A. WILKINSON,
Wilkinson, Cragun & Barker,
Washington, D.C.

DEAR MR. WILKINSON: Thank you for your letter dated December 22, 1970, in regard to the Eagle River Adjudication and Water Division No. 5, cases now pending before the Supreme Court of the United States. Both cases involve the Colorado River stream system.

In accordance with your letter Mr. Veeder has been directed to undertake a full review of those cases as they relate to the rights to the use of water of the American Indians within the Colorado River drainage and as to the broader aspects of the precedents which may emerge from the decisions of the Court.

Sincerely yours,

LOUIS R. BRUCE,
Commissioner.

[App. LXXXIV] U.S. DEPARTMENT OF THE INTERIOR,
Washington, D.C., January 21, 1971.

MR. RAYMOND C. SIMPSON,
406 Security Bank Building,
Long Beach, Calif.

DEAR MR. SIMPSON: Thank you for your telegram dated December 16, 1970, in regard to the Eagle River Adjudication and Water Division No. 5, cases now pending before the Supreme Court of the United States. Both cases involve the Colorado River stream system.

In accordance with your telegram Mr. Veeder has been directed to undertake a full review of those cases as they relate to the rights to the use of water of the American Indians within the Colorado River drainage and as to the broader aspects of the precedents which may emerge from the decisions of the Court.

Sincerely yours,

LOUIS R. BRUCE,
Commissioner.

[App. LXXXV] HARTLEY, OLSON & BACA,
Albuquerque, N. Mex., February, 12, 1971.

Re Eagle River Adjudication—State of Colorado No. 87, October Term, 1970—Supreme Court.

Hon. LOUIS R. BRUCE,
Commissioner of Indian Affairs,
Washington, D.C.

DEAR COMMISSIONER: Your attention is invited to the Eagle River Adjudication suit in the State of Colorado (United States vs. The District Court in and for the County of Eagle, State of Colorado, No. 87, October term, 1970, United States Supreme Court). As attorney for the All Indian Pueblo Council and several of the individual Indian tribes within New Mexico, I am gravely concerned over the far-reaching effects of the decision in this case, should the United States Supreme Court sustain certain views which are being presented therein. The precedents to be established may have far reaching effects and are of major concern to the Indian Pueblos of New Mexico, particularly as they may affect the present Rio Grande Adjudication.

Accordingly, I think most serious attention must be given by you and your staff to the positions taken in this case to see that the Indian interests are protected. Further, may I suggest that your immediate and prompt attention be given to this case with the thought in mind that perhaps a conference may be arranged at an early date between your appropriate staff members and the attorneys representing Indian tribes whose water rights may be directly or indirectly affected by the decision.

We thank you for your attention to this matter.

Very truly yours,

THOMAS O. OLSON.

[App. LXXXVI] No. 812

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1970

UNITED STATES OF AMERICA, PETITIONER *v.* THE DISTRICT COURT IN AND FOR WATER DIVISION No. 5, STATE OF COLORADO, AND THE JUDGE THEREOF, THE HONORABLE CLIFFORD H. DARROW, AND THE WATER REFEREE THEREOF

On Writ of Certiorari to the Supreme Court of the State of Colorado

BRIEF OF RESPONDENT COURT AND THE COLORADO RIVER WATER CONSERVATION DISTRICT

* * * * * * *

February 12, 1971

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STATUTES INVOLVED

* * * * * * *

148–21–17. Administration and distribution of waters.—(1) The state engineer shall be responsible for the administration and distribution of the waters of the state, and in each division such administration and distribution shall be accomplished through the offices of the division engineer as specified in this article.

(3) In the distribution of water, the division engineer in each division and the state engineer shall be governed by the priorities for water rights and conditional water rights established by adjudication decrees entered in proceedings concluded or pending on the effective date of this article and by the priorities for water rights and conditional water rights determined pursuant to the provisions of this article. All such priorities shall take precedence in their appropriate order over other diversions of water of the state.

* * * * * * *

148–21–20. Proceedings by the water judge.—(1) On . . . the first Tuesday of April and October in division 5 . . . the water judge for the . . . division shall commence hearings with respect to the subject matter of protests filed and orders of rereferral entered by the referee during the preceding six calendar months. Such matters shall generally be considered by the water judge in chronological order, however, the dates and times of hearings shall be adjusted by the water judge at his discretion for the convenience of persons involved or for other reasonable cause.

* * * * * * *

[App. LXXXVII] (5) A decision of the water judge with respect to protested ruling of the referee shall either confirm, modify, reverse or reverse and remand such ruling, and in the case of the modification of a ruling the decision may grant a different priority than that granted by the referee and may specify its own terms and conditions with respect to a change of water right of plan for augmentation. A decision of the water judge in regard to a matter which has been rereferred by the referee shall dispose fully of such matter and may contain such provisions as the water judge deems appropriate. The water judge shall confirm and approve as part of his judgment and decree a ruling of the referee with respect to which no protest was filed, provided that the water judge may reverse or reverse and remand any such ruling which he deems to be contrary to law.

(9) Appellate review shall be allowed to the judgment and decree, or any part thereof, as in other civil actions, but no appellate review shall be allowed with respect to that part of the judgement or decree which confirms a ruling with respect to which no protest was filed.

QUESTIONS PRESENTED[3]

(1) Whether under 43 U.S.C. 666, a State court in adjudicating water rights under State law can obtain jurisdiction over the United States.

(2) Whether, upon joinder of the United States pursuant to 43 U.S.C. 666, the United States must present all of the water rights it owns or claims, including those it may claim as reserved rights, for adjudication with the claims of others.

STATEMENT

This case raises in our view the identical questions, stated just above, as posed in *United States* v. *The District Court in and for the County of Eagle and State of Colorado, et al.*, No. 87, this term (hereinafter No. 87). There are, of course, certain factual differences which we treat in this statement, but the same basic issue of state court jurisdiction is presented in both cases.

* * * * * * *

The Colorado Supreme Court had already decided precisely the opposite in the *Eagle County* case (No. 87) and thus promptly denied, *en banc*, the writ applied for (App. 27). The United States [App. LXXXVIII] then filed here for certiorari and, just as in No. 87, we supported the application for the writ because of the importance of a decision now on the same basic question of jurisdiction which both cases present.[9]

SUMMARY OF ARGUMENT

The jurisdictional issue, which is all this Court need decide to dispose of both cases, was offered in sharp focus by the United States when it came here seeking certiorari in No. 87. There, after admitting the decision below did not terminate the entire litigation, to assure the Court there was finality of judgment below permitting review, the Government noted:

> ". . . Since [the jurisdiction] issue is *clearly separable* from the merits of the litigation pending in the State district court (the relative rights and priorities of the claimants of water rights in Water District 37), and is not subject to further review in the Colorado courts, the judgment is final for purposes of this Court's jurisdiction . . . ." (Pet. in No. 87, then No. 1178, Oct. Term, 1969 at 9, emphasis added).

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[3] This footnote omitted here.

[9] In conferences among counsel while the petition for certiorari was pending in No. 812 there was mutual recognition of the desirability for ongoing proceedings on water matters in the respondent court in the interests of the proper administration of the 1969 Act and, at the same time, of the effect that the various deadlines in that Act could have upon any rights of the United States in its absence. This led to an unopposed request for a stay by this Court, which stay has been implemented by agreement among counsel on the language to be inserted in decrees which will hold the rights of the United States in status quo pending the decision of this Court.

(See Appendix, Page 58.)

This "clearly separable" issue, as stated by the United States was whether:

> . . . the Colorado district court has jurisdiction under a federal statute to adjudicate the water rights of the United States, including its reserved rights." (id.)

* * * * * * *

LETTER FROM ACTING ATTORNEY GENERAL RICHARD KLEINDIENST TO SENATOR KENNEDY TRANSMITTING LIST OF CASES HANDLED BY DEPARTMENT OF JUSTICE TO PROTECT INTEREST OF INDIANS

Office of the Attorney General,
Washington, D.C., April 28, 1972.

Hon. Edward M. Kennedy,
Chairman, Subcommittee on Administrative Practice and Procedure, Committee on the Judiciary, U.S. Senate, Washington, D.C.

Dear Mr. Chairman: At the hearing before the Subcommittee on November 30, 1971, reference was made to a request to this Department by the Subcommittee for Indian Affairs of the Senate Interior and Insular Affairs Committee for a list of cases handled by the Department to protect the interests of Indians during the preceding ten years. You requested a copy of such list when it should be completed.

The list has been completed and a copy of it, together with a copy of our letter to the Chairman of the Senate Committee on Interior and Insular Affairs explaining the list, is enclosed herewith.

Sincerely,

Richard G. Kleindienst,
Acting Attorney General.

Office of the Attorney General,
Washington, D.C., April 28, 1972.

Hon. Henry M. Jackson,
Chairman, Senate Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

Dear Senator Jackson: At the hearing on November 22, 1971, before the Subcommittee on Indian Affairs on S. 2035, Senator Anderson requested that this Department submit to the Subcommittee a list of cases handled by the Department to protect the rights of Indians and showing the outcome in each case for the previous ten years.

The requested list is enclosed. It does, we believe, indicate most of the cases of the kind referred to in the request handled by the Department during the time period mentioned. You should understand, however, that record-keeping systems throughout the Department are not keyed to identification of all cases handled which may come within the scope of the request and that for this reason there may be some omissions from the list. If there are, we think they are relatively few.

You will note on the list some numbers, but no case identification material with the numbers. An example is No. 29. Where such numbers appear, it is because decision was made after the first typing of the list that some cases included at that time were very clearly not cases "to protect the rights of Indians."

For example, suits in the Court of Claims by Indian tribes or individual Indians, or in the district courts under the Tucker Act to recover money damages or compensation for allegedly wrongful actions of the United States or its officers have not been included. In addition to excluding cases of that kind, there has been no effort in this list to indicate claims against the Government before the Indian Claims Commission, suits by the Government to condemn Indian lands, or other cases involving Indian interests in which this Department's participation has been limited to the representation of clearly non-Indian interests. In some cases, however, (for example, where there has been a dispute between individual Indians and tribal authorities, or between Indians on the one hand and Interior Department officials on the other in the performance of their duties in the administration of Indian affairs) it has not been clear whether or not they are within the scope of the request, and they have been included in the list.

I am also enclosing a copy of my letter to Senator Allott in response to the questions he raised by letter of November 24 in connection with the hearings on S. 2035.

Sincerely,

Richard G. Kleindienst,
Acting Attorney General.

Name of case or claim and court in which filed	Subject	Result or status	Remarks
1. Alaska v. Ivon Otetz, et al., USDC, Alaska	Condemnation of Indian allotment	Case settled in amount satisfactory to Interior Department.	Received Aug. 7, 1967; closed Aug. 28, 1968.
2. Alaska v. Mary Jane Alexander, U.S., et al., USDC, Alaska.	Condemnation of land held by United States under trust deed for native.	Compensation of $7,000 exclusive of costs paid in return for title vesting in State.	Received Mar. 13, 1970; closed July 7, 1971.
3. Alaska v. John R. Malutier, et al., USDC, Alaska.	Condemnation of Indian allotment	Compensation of $24,000 exclusive of costs paid in return for title vesting in State.	Received Aug. 8, 1967; closed Feb. 11, 1968.
4. U.S. v. Juneau Indian Village, State of Alaska, City of Juneau, USDC, Alaska	Action to enjoin filling of harbor where fill interfered with Indians' small boat harbor and possession of tidelands. Also action to quiet title to lots in question on lands in use and possession of Indians protected by an 1884 act.	Judgment entered in favor of defendant on its motion to dismiss on grounds of res judicata and collateral estoppel on basis of a 1948 case. Sol. Gen. decided not to apeal.	Received June 14, 1961; closed Apr. 15, 1962.
5. Albuquerque Metropolitan Arroyo Flood Control Auth. v. Pueblo of Sandia, et al., USDC, N.M.	Condemnation of Pueblo land	Compensation of $170,804 exclusive of costs paid in return for the land.	Received Nov. 20, 1964; closed Mar. 16, 1970. Case involved complicated and time-consuming valuation and appraisal procedures as well as conflicts among Indians composing pueblo.
6. Re Alexander Constr. Co., USDC, C.D., Cal	Action filed at request of BIA to recover damages for removal of fill from Indian land.	After more than 2 years of investigation, including FBI efforts, claim was found to be uncollectible.	Amount sought had been $85,000 to $100,000 for illegal removal of 80,000 yards of fill. Estate of Mr. Alexander of Alexander Construction Co., had been closed and distributed. Investigation showed no other available assets. Received Nov. 10, 1965; closed July 14, 1969.
7. Re Eugene Allen, USDC, E.D., Okla	Claim for unpaid rentals on lease of tribal land	Allen voluntarily vacated property and paid rent due ($120).	Received July 26, 1961; closed July 17, 1962.
8. Re O. M. Allen, USDC, E.D., Okla	Ejectment of former lessee from tribal property and collection of $90.	Allen vacated premises. U.S. Attorney concluded amount of claim did not justify suit.	Received July 26, 1962; closed Oct. 22, 1962.
9. Re T. E. Allen and Silas Daniels, USDC, N.D., Okla.	Ejectment of former lessee from tribal land and collection of $432.	Matter settled administratively by B.I.A	Received Sept. 13, 1962; closed Nov. 19, 1962.
10. U.S. v. Aloha Lumber Corp., USDC, W.D., Wash.	Action to recover $102,791 in alleged underpayment on Indian timber contract. Case related to a similar action, U.S. v. Rayonier, Inc.	Settlement negotiated for payment of $33,000 as payment in full.	A provision of the original contract was open to interpretation in that there was a question whether the contract provided for allowance to Alcha of interest on the advance payments as a factor in adjusting stumpage prices. Received Aug. 6, 1963; closed Jan. 13, 1970.
11. Aloha Lumber Corp. v. Udall, USDC, W.D., Wash.	Action to review and set aside Interior Security decision fixing timber prices to be paid under Indian Timber Sales Contract. This was a counter suit to case of U.S. v. Aloha Lumber Corp., see case No. 10.	See case No. 10	Received May 12, 1967; closed Mar. 2, 1971. Quinault Tribe intervened as a defendent in counterclaim and contested decision not to appeal a court ruling remanding the matter to the Secretary of Interior unless Aloha appealed same. Aloha did appeal the court ruling, United States cross-appealed, and tribe moved to dismiss appeals as premature. Settlement of this case was connected with settlement of case No. 10. Quinault members participated in settlement, including dismissal of respective appeals.
12. American Fire & Casualty Co. v. Chas. Sockey, et al., USDC, E.D., Okla.	Action to establish right to remove buildings from restricted land.	Judgment for defendant Indians after removal of cause from State to Federal court.	Received October 21, 1966; closed May 31, 1968.

13. American Fire & Casualty Co. v. Ed. Sockey, et al., USDC, E.D., Okla. Related to case No. 12.	See case No. 12	See case No. 12	See case No. 12.
14. Re American Forest Products Corp., USDC., E.D., Cal.	Action to recover $17,000 suppression costs of forest fire.	Settlement in amount satisfactory to Department of Interior ($3,000).	Received March 5, 1968; closed January 15, 1969.
15. Re Alan J. Anderson, USDC, Mont	Collection of operation and maintenance charge on Blackfoot irrigation project.	Payment of claim in full without a contest ($4,128.-34).	Received September 7, 1965; closed October 24, 1966.
16. Estate of Anthony Joseph Andreas, Jr., Superior Court, Riverside Co., Cal.	Guardianship and conservatorship proceedings involving Agua Caliente Indians.	Petition for termination was denied	Received May 13, 1968; closed January 8, 1969.
17. Anthony, Cleopatra, et al. v. Babbitt Bros. Land Co., et al., USDC, Ariz.	Action to enjoin defendant, including U.S., from interfering with use of Indian allotments for access by necessity and for damages of $300,000.	U.S. motion to dismiss granted	Received May 10, 1970; closed January 12, 1971.
18. Re Antler Land Co., et al. No court	Proposed test cases to set aside conveyances to Antler and others of unrestricted alloted lands on Crow Indian Reservation as violation of limitations in section 2 of the act of June 4, 1920 (41 Stat. 751).	While request under consideration Interior announced support of legislation to validate the questioned conveyances. Although such legislation was not enacted, Interior's request to proceed with these actions was not revived after the legislative proposal became dormant. Justice closed its files after Interior advised it was of the view available facts unsuitable for test case and subject to reopening at Interior's further request.	Received April 1960 and April 1963; closed November 20, 1967.
19. Ariz., ex rel., Justin Herman, Dir. Ariz. Hwy. Dept. v. Arthur J. Faul, et al., Superior Ct., Pinal County, Ariz.	Condemnation of land within Indian irrigation project.	Negotiated settlement concluded among State, defendant and Department of Interior with no costs to United States, no title transfer, and with work done to U.S. satisfaction.	Received July 3, 1962; closed July 9, 1964.
20. Ariz., ex rel., Justin Herman, Dir. Ariz. Hwy. Dept. v. James Robert Waddle, et al., Superior Court, Pinal Co., Ariz.	Same case as No. 19	Same case as No. 19	Same case as No. 19.
21. Arkansas-Louisiana Gas Co. v. Winema Ott & U.S., USDC, E.D., Okla.	Condemnation of pipeline right-of-way across Indian allotment.	Satisfactory award of $700 was made and accepted	Received August 27, 1963; closed June 3, 1964.
22. Armstrong v. Beard, D.C. Canadian Co., Okla.	Action by Indian candidate defeated for tribal office to enjoin successful candidates.	Government motion to dismiss complaint against defendant Indians was granted.	Department of Interior concluded Government should represent defendant. Private counsel was appointed for plaintiff. Case was deemed moot at time of dismissal, and plaintiff had not contested dismissal. Received August 15, 1966; closed June 4, 1968.
23. Associates Discount Corp. v. Adam LeClair, et al., Common Pleas Ct., Okla. Co., Okla.	Garnishee proceedings against area director B.I.A.	Motion to dismiss for lack of jurisdiction granted	Received Aug. 18, 1966; closed Nov. 3, 1966.
24. Associates Discount Corp. v. Frank L. & Vaniela Miller, et al., USDC, W.D., N.C.	Action to recover $103,600 due on a note secured by chattel mortgage executed by defendant Cherokee Indians, owners of a motel (the collateral) on the land of the Eastern Cherokee Tribe.	Court sustained motion by United States to dismiss	Received Jan. 8, 1969; closed Jan. 28, 1970.
25. Re Association of Conservators, Guardians, etc. USDC, C.D., Cal.	Proposed action against Association of Conservators or Agua Caliente Indians for an accounting and for the return of unrestricted funds paid from several Indian estates.	Justice Department informed Interior that United States did not have standing to maintain the proposed action questioning the legality and propriety of a disposition or conveyance of Indian property in the absence of Federal restrictions.	Received May 21, 1968; closed Feb. 25, 1969.

Name of case or claim and court in which filed	Subject	Result or status	Remarks
26. Attorknie v. Udall, USDC, W.D., Okla.	Action to set aside Secretary of Interior order approving an Indian will.	U.S. Court of Appeals, 10th Circuit, reversed a lower court decision and held that a Federal court had no jurisdiction to review a decision by the secretary in a case like this.	This case led to a split among the circuits on the reviewability of the secretary determination in these cases. See Tooahnippah v. Hickel, 397 U.S. 598 (1970), case No. 846, for the Supreme Court resolution of this issue.
27. U.S. v. J. L. Marrow and Atoka County Bd. of Com'rs, et al., USDC E.D., Okla.	Action to quiet title in certain land and to recover damages resulting to Choctaw-Chickasaw Nations as a result of defendant alleged unlawful use and occupancy.	Judgment for pl. US	Received Dec. 31, 1964; closed Feb. 1, 1967.
28. U.S. v. Adams County, et al., USDC, W.D., Wis.	Action to quiet title to 2 Winnebago homestead allotments.	Judgment quieting title as requested	Received April 26, 1962; closed May 25, 1970.
29.			
30. State of Alaska v. Thorson, Superior Ct., Alaska.	Condemnation by State affecting claim of occupancy of Alaskan Native.	Judgment entered in favor of Native claimant	Received Sept. 26, 1962; closed Dec. 11, 1962.
31. State of Alaska v. 7.113 Acres of Land, Bessie Barnabas, et al., USDC, Alaska.	Action to condemn Indian land	Case settled in amount satisfactory to Interior Department.	Received Feb. 2, 1966; closed Jan. 7, 1970.
32. State of Alaska v. Theodore, Superior Court, Alaska.	do	Action dismissed	Received Mar. 4, 1966; closed Aug. 5, 1966.
33. Bacher v. Patencio, USDC S.D., Cal.	Suit for specific performance of contract for conveyance of Indian's allotment.	Judgment for defendant. Indian affirmed on appeal.	Received May 11, 1964; closed Mar. 23, 1967. United States only acted as observer since Indian defendant retained private legal counsel.
34. Re Badger Cold Storage Co. (no court)	Proposed suit to recover amounts due Indian enterprise.	Suit dropped since debtor was found to have no attachable assets.	Received Dec. 2, 1966; closed Apr. 13, 1967.
35. Re Nathaniel Baker, Washoe Co. Dis. Ct., Nev.	Action by Klamath Indian for review of Secretary of Interior decision on determination of assistance.	Judgment for plaintiff Indian. Consent decree entered.	Received Aug. 2, 1961; closed Sept. 12, 1962.
36. In the Matter of the Guardianship of Betty Baldwin and Edna Stanton Boyd, USDC, Oregon.	Action to set aside Secretary of Interior determination that 2 Klamath Indians are not competent to continue management of their affairs.	Dismissal of complaint by stipulation	Received May 3, 1961; closed Jan. 9, 1962.
37. Banks v. Hickel, USDC Oregon	Action for allotment on Oregon and California revested lands.	Dismissal of complaint	Received Apr. 20, 1970; closed Oct. 15, 1970.
38. U.S. v. Bardsher, et al. USDC, W.D. Okla.	Action to recover $310 for use of Indian land and for possession of land.	Payment of claim in full plus costs. No court contest.	Received Oct. 27, 1959; closed May 7, 1962.
39. Barnes v. U.S. et al., USDC, Montana	Injunction against tribal officer	U.S. motion for dismissal on behalf of tribal council chairman granted.	Received Mar. 8, 1962; closed Aug. 31, 1962.
40. Matter of Calvin Barney, USDC, Oregon	Action to set aside determination of competency under Klamath Termination Act.	Consent decree entered on behalf of plaintiff Indian.	Received July 24, 1961; closed Jan. 26, 1962.
41. City of Bartlesville v. Certain lands and Elizabeth Daniels, USDC, N.D., Okla.	Condemnation to obtain an interest in Indian land	Case settled in amount satisfactory to Interior Department.	Received Aug. 21, 1962; closed Sept. 27, 1963.
42. U.S. v. Clifford Baxely, et al., USDC, E.D., Okla.	Action to quiet title to Choctaw tribal lands	Default judgment entered against defendants. Payment of $200 for unlawful use and occupancy of tribal lands.	Received Jan. 15, 1965; closed Mar. 25, 1966.
43. U.S. v. Richard & Ruth Bean, USDC, Alaska	Action to recover $3,299 due on loan to Indian	Case settled by compromise with $1,655 collected	Received Mar. 14, 1958; closed Nov. 6, 1964.
44. U.S. v. Beck, USDC, W.D., N.C.	Action to enjoin operation of laundromat without trader's license on Indian Reservation.	Defendant settled by paying the appropriate tribal levies.	Received Sept. 11, 1964; closed Nov. 25, 1964.

45. U.S. v. Bennett County, USDC, W.D., S.D.	Action to enjoin unauthorized construction of road across restricted Indian land.	Judgment granting permanent injunction against defendant county highway department. Judgment affirmed by USCA, 8th Circuit.	Received Nov. 15, 1965; closed May 17, 1967.
46. Berliner v. Squaxin Island Tribe, et al., USDC, W.D., Wash.	Action to establish title to oysters planted in tidal waters of Squaxin Island Tribe.	Court granted U.S. motion for dismissal after all parties agreed to an order drafted by U.S. [Agreed order of dismissal.]	Received July 16, 1970; closed Oct. 7, 1970.
47. Re Mathilda Bighead, Common Pleas Ct., Lucas Co., Ohio.	Proceeding to obtain custody of Indian child	Petition motion for a rehearing was withdrawn	Received Dec. 19, 1963; closed June 9, 1964.
48. U.S. v. Blalock, USDC, E.D., Okla	Proposed suit to evict lessee of Indian lands	Back rent paid in full ($222) and suit dismissed on motion of United States.	Received Sept. 25, 1964; closed Mar. 3, 1965.
49. U.S. v. Bledsoe, USDC, N.D., Okla	Ejectment action against former lessee of Indian land.	Satisfaction of judgment by payment of $179.38	Received May 13, 1963; closed Jan. 5, 1966. The district court's summary judgment for United States was appealed to 10th Circuit where judgment was affirmed.
50. U.S. v. Boundary County, Bd. of Com'rs, USDC, Idaho	Action to recover overpayment by BIA for reclamation drainage assessments.	Case settled by compromise	Received Apr. 20, 1962; closed Sept. 9, 1965.
51. Re Diana & Lucille Ann Bow, USDC, C.D., Cal.	Guardianship and conservatorship proceedings involving Agua Caliente Indians.	Dismissal with prejudice of petition for termination of guardianship.	Received May 16, 1968; closed Dec. 23, 1968.
52. Re Wilson Bow, USDC, C.D., Cal	Same complaint as case No 51	Same result as case No. 51	Received May 16, 1968; closed Aug. 19, 1968.
52. U.S. v. Julius Bowen, et al., USDC, E.D., Okla.	Action to quiet title to Choctaw-Chickasaw tribal land.	Judgment for plaintiff (U.S.). Judgment satisfied and release issued.	Received Dec. 31, 1964; closed June 14, 1967. Case involved unlawful use and possession of Indian lands.
54. Bowman v. Udall, USDC, District of Columbia	Action to enjoin Secretary of Interior from restoring to ownership of San Carlos tribe more than 230,000 acres in which plaintiff claim rights under Taylor Grazing Act. (San Carlos Apache Tribe.)	Judgment for defendant	Received Jan. 11, 1963; closed May 2, 1967.
55. Re Edna Stanton Boyd, USDC, Oregon	Action to set aside Secretary of Interior decision that Klamath Indian is not competent and to continue management of her affairs as a guardian.	Dismissal of petition with prejudice	Received May 13, 1961; closed Jan. 9, 1962.
56. Boynton v. Boynton, Canadian Co. Dist. Ct., Okla	Action to enjoin area director, BIA, from disbursing money from individual Indian money account.	Dismissal of action against area director	Received Dec. 5, 1966; closed Jan. 17, 1967.
57. U.S. v. Jennie S. Crutcher Foundation, USDC, E.D., Okla	Action to quiet title to Choctaw-Chickasaw lands and for damages for unlawful use and occupancy.	Judgment for the plaintiff (default judgment)	Received Jan. 13, 1965; closed Jan. 13, 1967.
58. Re Dallas A. Brien, USDC, N.D	Proposed action to recover amount due on Indian loan.	Case disposed of by payment of claim in full ($378)	Received Oct. 27, 1966; closed Jan. 9, 1967.
59. Re Brightwood Lumber Co., USDC, N.D., Cal.	Action to recover $31,500 double damages for timber trespass and to enjoin further timber cutting.	Case was terminated by Justice Department since it was not within provisions of U.S. Attorney. Manual on direct ref. cases.	Received Jan. 21, 1966; closed Apr. 1, 1966. Case closed pending formal request for action from Department of Interior.
60. Re John Broadhead, USDC, Mont	Collection action for operation and maintenance charge on Blackfoot irrigation project.	Debtor agreed to liquidate indebtedness by 6 payments over a 5-year period to the satisfaction of Interior.	Received Sept. 7, 1965; closed May 18, 1966.
61. U.S. v. Della Marie Brookens, USDC, Mont	Proposed action to correct patent and to quiet title to minerals in allotment to Blackfoot Indians.	Default judgment entered against defendant	Received June 27, 1966; closed Mar. 9, 1970.
62. Re Myron Brough, USDC, Utah	Proposed action to recover delinquent operation and maintenance assessments of $1,050 in Uintah irrigation project.	Claim withdrawn without filing any complaint	Received Jan. 8, 1964; closed Apr. 23, 1964.
63. U.S. v. City of MCAlester, W. H. Browning, et al., USDC, E.D., Okla.	Action to clear title to land in connection with Choctaw Termination Act.	Judgment for plaintiff	Received Jan. 31, 1969; closed Feb. 23, 1971.
64. U.S. v. Ethel Leech, et al., USDC, Mont	Action to establish mineral reservation to Indian tribe in a trust allotment.	Summary judgment for United States was appealed to 9th Circuit, where judgment was affirmed.	Received May 1, 1964; closed Sept. 20, 1967.

Name of case or claim and court in which filed	Subject	Result or status	Remarks
65. U.S. v. Brummett, USDC, W.D., Wash	Action to remove building from Indian land	Defendant removed offending structure and suit was dismissed.	Received Mar. 30, 1966; closed Feb. 11, 1970.
66. U.S. v. County Assessor of Bryan County, USDC, E.D., Okla.	Action to quiet title to land conveyed for cemetery lots and for damages for unlawful use and occupancy.	Judgment for plaintiff	Received Apr. 28, 1965; closed July 6, 1966.
67. Buckman v. U.S., USDC, S.D	Mandamus action to require Commissioner of Indian Affairs to act on appeal for patent in fee for allotment on Cheyenne River Reservation.	Plaintiff complaint dismissed without prejudice on motion of United States.	Received Sept. 29, 1970; closed Apr. 14, 1971.
68. Re Buffalo Creek Indian Methodist Church, USDC, E.D., Okla.	Action to quiet title to mineral interest claimed by Choctaw-Chickasaw Tribes.	Action withdrawn with Interior Department approval.	Received March 26, 1965; closed July 18, 1967.
69. U.S. v. Burd, USDC, Mont	Action to recover operation and maintenance charges on Indian irrigation project.	Claim paid in full and complaint dismissed with prejudice.	Received Jan. 18, 1967; closed Dec. 5, 1967.
70. Burnette v. Schunk, USDC, S.D	Action to recover penalties under 24, U.S.C., 68, for alleged trading by defendant. BIA employee with restricted Indians.	U.S. motion for dismissal granted with prejudice. (United States represented defendant.)	Received Sept. 7, 1966; closed Feb. 12, 1969.
71. Burnside v. Fulwilder, USDC, N.D., Cal	Action to recover possession of Indian allotment from claimant of alleged right-of-way.	Complaint by right-of-way claimant dismissed on motion of United States, representing Indian defendant.	Received Sept. 12, 1963; closed Apr. 26, 1965.
72. Burris v. Black Crystal Coal Co., et al., USDC, E.D., Okla.	Action to determine title to undivided ½ interest in certain Choctaw coal deposits.	U.S. motion to dismiss for lack of jurisdiction granted (filed on behalf of BIA area director).	Received Sept. 15, 1969; closed Oct. 28, 1969.
73. U.S. v. Burtch, USDC, Mont	Action to recover delinquency on loan to Indian	Judgment for United States in amount of $1,302.50. Judgment satisfied by compromise payment of $800.	Received Nov. 9, 1956; closed Mar. 16, 1965. This case was held in abeyance for more than 3 years while trying to locate assets of debtor.
74. U.S. v. Caldwell, USDC, N.D., Cal	Action for damages for unlawful occupancy of Indian allotment and for ejectment of defendant.	Judgment for plaintiff	Received June 26, 1962; closed Mar. 11, 1966.
75. U.S. v. Caldwell, USDC, Minn	Action to recover $462 double damages for timber trespass on tribal lands.	Judgment for plaintiff but nothing collected on judgment.	Received June 21, 1965; closed Jan. 3, 1967.
76. California v. Gillette, USDC, S.D., Cal	Condemnation of allotted land	Case settled in amount satisfactory to Department of Interior ($4,972.25).	Received July 29, 1964; closed Mar. 24, 1965.
77. California v. U.S., USDC, S.D., Cal	Condemnation of Palm Springs tribal and allotted land.	Case settled by judgment in amount satisfactory to Interior Department ($97,623.10).	Received Dec. 15, 1965; closed Jan. 20, 1967.
78. California v. Sisk, Superior Ct., Shasta Co., Cal.	Action to restrain Big Bend Rancheria Indians from blocking Forest Service access road.	Controversy settled by negotiations presided over by U.S. Attorney for the district. Indians consented to stop interfering with use and maintenance of access road.	Received May 18, 1966; closed Oct. 11, 1966.
79. Canadian-Walnut Soil & Conservancy District v. Rena Watson Tushka, et al., USDC, E.D., Okla.	Action to condemn allotted Indian land	Case settled by judgment in amount satisfactory to Interior Department ($3,325).	Received Jan. 13, 1965; closed May 5, 1966.
80. Cannon v. U.S., and Walter Hickel, USDC, Oregon.	Action seeking Indian allotment on revested Oregon and California lands.	Dismissal of plaintiff complaint on Government motion.	Received May 11, 1970; closed Oct. 15, 1970.
81. U.S. v. Herman Carline, USDC, W.D., La	Action to remove trespasser from Indian allotment	Judgment for plaintiff. Defendant complied and ceased trespass.	Received Sept. 9, 1964; closed Feb. 2, 1965.
82. Carmelo v. Johnson, Humphrey, Udall, et al., USDC, S.D., Cal.	Action to obtain Indian public domain allotment patents.	Dismissal of complaint on Government motion	Received Feb. 23, 1965; closed Aug. 24, 1965.
83. U.S. v. Carper, et al., USDC, Neb	Proposed action to collect delinquent rentals on Winnebago Indian allotment.	Case settled by payment of rent due in full ($713.40).	Received Mar. 18, 1971; closed June 4, 1971.

84. Re Carter County, USDC, E.D., Okla	Action to quit title to Choctaw-Chicasaw tribal lands and for damages for unlawful use and occupancy. This action was proposed to quit title to cemetery tracts claimed by the tribes.	Matter resolved through administrative action in Department of Interior.	Received July 20, 1965; closed July 18, 1967
85. U.S. v. Cascadia Devel. & Production Co., et al., USDC, Mont.	Action to reform patent and establish mineral reservation in Blackfoot Tribe.	Summary judgment entered for United States.	Received Feb. 16, 1961; closed July 14, 1964.
86. U.S. v. Theodore Cash, USDC, E.D., Okla.	Action to eject trespasser and recover damages.	Compromise negotiated, and suit withdrawn (named defendant paid rent for previous use of land and signed a 5-year lease).	Received Mar. 21, 1962; closed Sept. 28, 1962.
87. Re Genevieve & Luther Cayton, USDC, E.D., Cal.	Tentative request for representation of Indians to determine claimed rights in Shenghe Spring Rancheria.	Indians abandoned their request after they were informed that the United States would be unable to represent them since BIA opposed their claims.	Received Sept. 30, 1970; closed Apr. 22, 1971.
88. U.S. v. Celtor Chemical Corp., et al., USDC, N.D., Cal.	Action to revodr more than $23,500 in royalties due under tribal mining lease.	Judgment for plaintiff in amount of $25,592.87, but defendant corporation was found to have no funds with which to pay judgment.	Received Mar. 5, 1963; closed May 2, 1966. Considerable effort was made to collect judgment, but without success. Tangible assets were encumbered by mortgages held by local bank, which also litigated its claims in a separate suit.
89. Re Lester Charley, S.Ct. Wash	Request for United States to represent Yakima Indian arrested for fishing in violation of State law.	United States represented defendant Indian who was subsequently acquitted of criminal charges and the acquittal was affirmed on appeal to the Supreme Court of Washington.	Received May 24, 1966; closed Aug. 20, 1968.
90. Chavez v. Bigman, USDC, N.M	Action against BIA law officer and Navaho Tribal Police for damages for injuries sustained in arrest off reservation and for an injunction.	Plaintiff moved to dismiss the complaint against Bigman who, as a Federal employee, was represented by the United States.	Received Jan. 7, 1970; closed July 23, 1970.
91. Chavez v. First National Bank of Oregon, USDC, Ore.	Action involving trusts established under the Klamath Termination Act.	Summary judgment for defendant wss reversed on appeal to 9th Circuit.	Received Feb. 9, 1962; closed Mar. 16, 1964.
92. Chemah v. Fodder, Cotton Co. Dist. Ct., Okla.	Action for partition of Indian land	Dismissal of complaint on motion of United States	Received July 6, 1966; closed Dec. 6, 1966.
93. Chemehuevi Tribe of Indians v. U.S, USDC, S.D., Cal.	Action to obtain judgment approving tribal constitution, bylaws, and rolls for recovery of $108,000 in funds allegedly withheld.	Dismissal granted for lack of jurisdiction	Received Oct. 23, 1963; closed July 28, 1964.
94. Chemehuevi Tribe of Indians v. U.S., USDC, C.D., Cal.	Action for declaratory judgment that plaintiffs are entitled to proceeds from sale of tribal lands, for judgment approving of triba rolls and constitution, and for an accounting.	Motion for dismissal of complaint was granted after a special committee composed of tribe members was permitted to intervene as defendants.	During pendency of case, Department of Interior gave clearance for approval of proposed constitution. Received Jan. 20, 1970; closed Aug. 18, 1970.
95. Cherokee County Soil & Water Conservation District v. Thomas R. Gourd, et al., USDC, E.D., Okla.	Action to condemn Indian lands	Case settled judgment in amount satisfactory to Department of Interior.	Received May 9, 1967; closed Apr. 30, 1968.
96. U.S. v. Chicago, Rock Island & Pacific R.R. Co., USDC, W.D., Okla.	Action to quiet title in heirs of allottee to land within abandoned railroad right of way.	Summary judgment entered for plaintiff	Received Apr. 27, 1967; closed Apr. 29, 1969.
97. U.S. v. Childs, USDC, Ariz.	Action to clear title to land deed to United States in trust for Papago Tribe subject to conditions claimed to have been fulfilled.	Lower court judgment for defendent was affirmed on appeal to 9th Circuit.	Received June 10, 1963; closed June 24, 1970. This case involved several intricate questions of law and fact as well as numerous heirs of settlor of trust.
98. Choctaw Nation v. Bee Askew, et al., USDC, E.D., Okla.	Action to declare escheat of unclaimed funds to tribe.	Dismissal of complaint without prejudice	Received May 1, 1964; closed Sept. 8, 1966.
99. Re Bernard Clark, Minn	Action for damages in timber trespass ($25.32)	File closed since small amount involved was uncollectible.	Received Mar. 10, 1965; closed July 8, 1965.
100. Re Melvin Clark, Minn	Action for damages in timber trespass ($58.98)	do	Do.

Name of case or claim and court in which filed	Subject	Result or status	Remarks
101. U.S. v. Philip A. Clark, USDC, E.D., Okla	Action to recover $247 due under Indian lease	Default judgment obtained and satisfaction was realized by way of compromise in amount of $211.50.	Received July 16, 1965; closed July 25, 1966.
102. U.S. v. George B. Clawson, et al., USDC, Mont.	Action in nature of interpleader to determine parties entitled to payment for Crow Indian home construction.	Judgment for plea entered and order for interpleader and for discharge.	Received Sept. 15, 1966; closed Mar. 2, 1969.
103. Re Choctaw Co., E.D., Okla	Proposed action to quiet title to Choctaw-Chickasaw tribal land used as cemetery and for money damages in compensation for damage to land by reason of unlawful use and occupancy.	Action not filed but disptue settled through administrative actions to satisfaction of all parties.	Received July 22, 1965; closed July 18, 1967.
104. U.S. v. First Union National Bank of N.C., W.D., N.C.	Action to enjoin disbursement of license taxes to North Carolina out of funds collected by Indians from Indian traders.	State agreed to stop making assessments against Indian funds for license fees levied on Indian traders and action was dismissed.	Received Nov. 25, 1966; complaint filed Feb. 14, 1967; action dismissed Dec. 4, 1968.
105. Cleveland, et al. v. Hickel, et al., Ariz	Action in Navaho tribal court by 2 members of tribe against tribe, Secretary of Interior and others for personal damages resulting from actions of tribe's contractor.	Action dismissed	Received Dec. 8, 1969; closed Mar. 23, 1970.
106. Re James S. Click, S.D., Fla	Boundary dispute and trespass involving Indian Reservation.	Action not filed, and dispute handled administratively by BIA.	Received Sept. 23, 1963; closed Nov. 17, 1967.
107. U.S. v. Cline, W.D., N.C	Action to recover possession of tribal land from trespassers.	Case disposed of by judgment for plaintiff, United States, and United States prevailed on appeal.	Received May 23, 1960; closed Apr. 21, 1970. Case had extensive hearings at trial and appellate levels.
108. Re George Cloud, E.D., Wash	Request that United States represent Yakima Indians arrested for fishing in violation of law.	Dispute dismissed in favor of Indians	Received May 19, 1966; closed June 22, 1967.
109. Re Louis L. Cloud, E.D., Wash	do	do	Received Oct. 12, 1966; closed Mar. 23, 1967.
110. Re Margaret Annie Cloud, Oreg	do	do	Received Oct. 5, 1966; closed Apr. 13, 1967
111. Re Willard Cloud, E.D., Wash	do	do	Received May 19, 1966; closed Feb. 28, 1967.
112. Re Coal Co., E.D., Okla	Same as case No. 103	Same as case No. 103	Received Mar. 31, 1965; closed July 18, 1967.
113. Re James F. Coburn & Glens Falls Ins. Co., Oreg.	Proposed action to recover money damages for failure to complete timber sale contract.	Case compromised by money settlement	Received Apr. 18, 1964; closed May 7, 1964.
114. Cochiti Pueblo, et al. v. Bernalillo Municipal School Dist. Bd. of Education, Sec. of Int. et al.	Action for injunctions on ground that plaintiffs are victimized by de facto segregation.	Action dismissed as to Federal defendant on motion of United States.	Received Jan. 30, 1970; closed May 27, 1971. Dismissal affirmed by 10th Circuit.
115. U.S. v. Cochran, et al. E.D., Okla	Same as case No. 103	Same as case No. 103	Received Dec. 28, 1964; closed Jan. 13, 1967.
116. Coffey v. Pitner & U.S. W.D., Okla	Action to enjoin BIA area director from calling and holding meeting of entire membership of tribes. Plaintiff were members of business committee who were fired by general counsel. Suit was to enjoin meeting of general counsel called for election of new members of business committee, alleging that discharge of plaintiff was void and unauthorized.	Action dismissed at cost of plaintiff upon motion to dismiss filed on behalf of Federal defendant.	Received Oct. 27, 1961; closed May 7, 1962.
117. U.S. v. Elmer Collins, ND, Okla	Action for ejectment of trespasser on Indian allotment and money damages for rental and interference with possession of lands for 1960 and 1961.	The case was satisfactorily resolved through compromise and $200 money damages were recovered for Indian allottee.	Received April 28, 1961, complaint filed January 22, 1965; notice of dismissal with prejudice filed December 9, 1965; closed December 9, 1965.

118. Comanche Co., Bd. of Education of Independent School Dist. No. 1 v. Certain land, U.S. et al., WD, Okla.	Action to condemn Indian allotment	At trial, jury determined $8,000 to be just compensation. No appeal taken to 10th Circuit.	Received September 22, 1964; trial held September 20 and 21, 1965; closed April 1, 1966.
119. Continental Oil Co., v. Sohio Petroleum Co., et al., ED, Okla.	Action to quiet title to land in oil and gas leases of Five Tribes of Indians.	District court ruled adverse to Government and entered judgment for quiet title.	Received October, 11, 1960; trial conducted October 16, 1961; closed May 21, 1962.
120. Continental Oil Co. v. Stewart Udall, D.C.	Action to establish that plaintiff's oil and gas lease includes an unsurveyed strip of Navaho land.	Defense prevailed at trial and judgment filed April 29, 1966; this judgment was affirmed on appeal and the supreme court denied cert., on October 9, 1967.	Received February 9, 1962; closed April 1, 1968. Case involved extensive pretrail maneuvering by place and remained in an open and active status until cert. was denied on September 9, 1967 by supreme court.
121. Continental Pipeline Co., v. Milne, et al., USDC, Mont.	Action to condemn pumping station and valve site on pipeline across Crow allotted Indian lands.	Case disposed of by judgment for place.; the amount collected for defense was $3,900; case uncontested; Government prevailed.	Received June 23, 1970; closed October 12, 1970.
122. U.S. v. Thomas H. Cook, et al., USDC, Mont.	Action to set aside deed to tribal land and to recover $640 for trespass damage.	District court awarded place $890.40 exclusive of costs.	Received October 2, 1963; closed June 28, 1968.
123. Mary Cornelius v. Reginald J. Brien, et al., St. Ct., N.D.	Action against Indian judge and Indian tribal council to challenge action of council in deposing plaintiff as chairman, seeking $45,000 damages.	Case dismissed on motion of defense. No damages awarded.	Received Aug. 24, 1967; closed June 3, 1968.
124. Mary Cornelius v. Duane Moxon, et al., USDC, N.D.	Action for injunction against tribal and Federal officials to enjoin allegedly unconstitutional action.	Case dismissed, Government prevailed.	Received Apr. 3, 1969; closed Oct. 14, 1969.
125. U.S. v. Ray Costello, USCD, S.D.	Action to set aside deed to Indian trust property and to cancel taxes.	Government prevailed in district court on judgment entered on July 12, 1968, for plaintiff.	Received Mar. 12, 1968; closed July 17, 1968.
126. Cotton Co., Bd. of Commissioners v. U.S. and Area Director of BIA, et al., WD, Okla.	Action to condemn Indian land	Case closed with satisfactory award in condemnation case.	Received July 16, 1965; closed Dec. 13, 1965.
127. D. Q. Couch v. Stewart Udall, WD, Okla	Action to set aside decision of examiner on estate of Kickapoo Indian.	Court granted defense motion for summary judgment and judgment affirmed on appeal to 10th Circuit. The real property protected was 187 acres.	Received July 27, 1966; closed Apr. 28, 1969.
128. U.S. v. Fanny L. and Lawrence Cox, and Steward Barrick, WD, Okla.	Action to enjoin trespass on Indian allotment	Case disposed of by judgment for United States	Received June 3, 1965; closed Feb. 17, 1966.
129. Craig Co. Bd. of Co. Commissioners of v. U.S., et al., ND, Okla.	Action to obtain reformation of a deed from the United States as to Indian lands.	Correction deed of attorney general was delivered to Craig County attorney and case disposed of by dismissal.	Received July 19, 1965; closed Jan. 20, 1966.
130. Craig Co. Bd. of Co. Commissioners v. Cherokee Nation, et al., St. Ct., Okla.	Action to quiet title claimed by Cherokee Tribe	Case disposed of by judgment for plaintiff	Received Jan. 24, 1966; closed Sept. 12, 1966. General Counsel of Cherokee Nation expressed approval and satisfaction with disposition of case, and no appeal taken.
131. Furman Crain, Sr. v. First National Bank of Oregon, USDC, Ore.	Action involving trusts established under Klamath Termination Act and testing constitutionality of act of Congress providing for termination of Federal supervision over Klamath Indians.	United States intervened in action and court granted defendant motion for summary judgment. Government prevailed on appeal to 9th circuit.	Received Feb. 9, 1962; closed Mar. 16, 1963.
132. Furman Crain, Jr., v. First National Bank of Oregon, USDC, Ore.	Same as case No. 131	Case dismissed on stipulation	Received Feb. 9, 1962; closed Nov. 1, 1962.
133. Marian Crain v. First National Bank of Ore., USDC, Ore.	Same as case No. 131	Same as case No. 131	Received Feb. 9, 1962; closed Mar. 16, 1963.
134. In the Matter of Rosetta Mae Crain, USDC, Ore.	Action to set aside determination of competency made under Klamath Termination Act.	Case dismissed on stipulation. Government prevailed.	Received Aug. 16, 1961; closed Apr. 18, 1962.
135. John L. and Cleo W. Crawford v. John Johnson, et al., St. Ct., Kan.	Action to quiet title to land on which United States may have mortgage as trustee for Delaware Tribe of Indiana.	United States filed disclaimer and was dismissed as defendant.	Received Nov. 19, 1968; closed Oct. 29, 1969.

Name of case or claim and court in which filed	Subject	Result or status	Remarks
136. In re Richard Crazy Cat, Son of Charles Crazy Cat, deceased, S.D.	Request for action to quiet title and cancel alleged forged deeds to Indian allotments.	Case closed since Interior requested that no action be taken, prior to filing of complaint.	Received Aug. 29, 1960; closed Aug. 27, 1963.
137. Wade and Ida M. Crawford v. Stewart L. Udall and Douglas Dillon, D.C.	Action by withdrawing members of Klamath Tribe to require distribution of $250,000 of tribal funds held by Interior.	Case dismissed upon stipulation of parties	Received June 18, 1964; closed Nov. 9, 1965.
138. Lillian, Percy and Robert Earl Crenshaw v. Stewart Udall, WD, Okla.	Action to require Secretary of Interior to approve will of deceased Indian.	Court granted defendant motion for summary judgment.	Received Aug. 14, 1968; closed May 21, 1969.
139. In the Matter of Nettie Alberta Cress, USDC, Ore.	Action to set aside determination as to competency made under Klamath Termination Act.	Case dismissed on stipulation of parties	Received July 24, 1961; closed June 12, 1962.
140. In re Crow Indian Tribal Council, Mont	Proposed actions to cancel deeds made by Crow Indians because of violation of acreage limitations.	Included in explanation of No. 18	
141. Crow Tribal Council, Mont	Proposed action to enjoin leasing of Crow Indian land contrary to Act of March 3, 1927.	No action filed, as issue was litigated in case of Big Day v. Fraser.	
142. Crow Tribe of Indians of Montana v. US, USDC, Mont.	Action to recover $5,000,000 for property appropriated by United States by Act of July 15, 1958, 72 Stat. 361. Act appropriated site for hydroelectric plant within Crow Indian Reservation, granted the tribe $2,500,000 for taking of its property, and gave tribe the right to bring action to recover any additional compensation the tribe felt it was entitled to.	Tribe was awarded additional $2,000,000 in nonjury trial by opinion rendered Oct. 1, 1963.	Received May 13, 1959; closed Apr. 16, 1964. Case involved extensive litigation and discussions.
143. O. C. Curfman v. Wm. R. Clark, et al., St. Ct. Wash.	Action between 2 lessors of Yakima Indian allotments over flooding of farm land by duck hunting pond. Request of United States to represent defendant.	United States refused to accept defense of action	Received Feb. 10, 1970; closed May 8, 1970.
144. Town of Cyril v. US and certain described land, WD. Okla.	Action for acquisition of Indian allotment	Case resolved to satisfaction of all parties and dismissed on stip.	Received Sept. 18, 1968; closed Feb. 3, 1969.
145. US v. Gillis Daniel, et al., ED, Okla	Action to quiet title to Choctaw Tribal land	Judgment entered for plantiff quieting title to Choctaw tribal lands.	Received Jan. 15, 1965; closed Feb. 27, 1966.
146. US v. R.E. Warren, et al., ED, Okla	Action to quiet title to Choctaw-Chickasaw lands	Judgment entered for United States quieting title to subject land.	Received Jan. 15, 1965; closed Feb. 11, 1969.
147. US v. L.R. Daniel Co., Inc., SD, Cal	Action to remove former lessee of tribal land, to set aside attempted renewal of lease, and for money damages for withholding possession.	Case disposed of by compromise and amount collected on behalf of plantiff $838.78.	Received May 29, 1963; closed Feb. 15, 1966. Case involved extensive ligigation, including appeal to 9th Circuit on partial summary judgment granted plantiff early in proceedings.
148. Elizabeth Daniels v. Howard F. Johnson and Stewart Udall, ND, Okla.	Action to require sec. of Int. to approve the will of deceased Osage Indian.	Case disposed of by dismissal.	Received June 14, 1966; closed Jan. 16, 1967.
149. Lee Ella Daniels and Tribal Indian Land Rights Association, Inc. v. Stewart Udall, WD, Okla.	Action to require issuance of allotment to Indian	Case disposed of by judgment for defendant, after administrative case file was filed with court for consideration.	Received May 28, 1964; closed Mar. 24, 1966.
150. Sophie David, et al. v. Margaret Eugene and John Johnson, et al., St. Ct. Idaho.	Action for partition of land on which United States held lien.	Action dismissed as to United States and no costs incurred.	Received Mar. 6, 1962; closed Sept. 17, 1962.
151. In re William G. Davisson, ED, Okla	Complaint of overgrazing of pasture in violation of pasture lease concerning Indian land.	After extensive consultation with Department of Interior, it was decided that no action should be filed.	Received June 12, 1961; closed Aug 7, 1962.

152. US v. Earl D. Dearman, ED, Okla	Action for ejectment of former lessee of Indian land.	Judgment entered for plaintiff	Received Mar. 15, 1963; closed Aug. 30, 1963.
153. US v. Bert C. Decker, et al., ED, Okla	Action to remove Indian allotment from tax rolls and to quiet title in the United States in trust for Indian allottees.	Case disposed of by compromise and $7,500 paid to Indian allottees.	
154. Williard Decker and Fern Decker v. US National Bank of Portland, et al., USDC, Ore.	Action by guardian of minor Klamath Indian against trustee of trust created by Secretary of Interior to set aside trust and approve judgment for amount of trust funds. Case certified by district judge under 28 U.S.C. 2403 as to constitutionality of Klamath Termination Act.	Judgment entered for defendant and appeal to 9th Circuit district.	Received Oct. 20, 1961; closed Apr. 24, 1964.
155. Jessee Lee Dehanas, et al. v. William E. Rodgers, ND, Okla.	Action to partition restricted land of members of Five Civilized Tribes.	Case dismissed on motion of Federal defendant	Received Sept. 12, 1969; closed Apr. 2, 1970.
156. US v. Clara and Jesse Denison, ED, Wash	Action to enjoin grazing trespass on Indian lands	Case disposed of by compromise in favor of Federal plaintiff.	Received Aug. 17, 1960; closed May 8, 1962.
157. Grant Denison v. US, ED, Wash	Action to recover damages because volume of timber on Indian allotment purchased by plaintiff was less than estimates made by BIA.	Case disposed of by dismissal for lack of jurisdiction.	Received Nov. 7, 1969; closed May 13, 1970.
158. In re Lyman Denzer, USDC, Mont	Collection of operation and maintenance charge on Blackfoot Irrigation project.	Full payment made to Government of claim submitted.	Received Sept. 14, 1965; closed May 18, 1966.
159. Bd. of Co. Commissioners of Dewey Co. v. US, et al., WD, Okla.	Condemnation of allotted Indian land	Case disposed of by dismissal. Case was uncontested and resolved to satisfaction of all parties.	Received June 15, 1965; closed Oct. 18, 1965.
160. Cornelius Discerly v. Alfred and Irwin Schmit, et al., USDC, Mont.	Action to recover $85,000 for defamation, refusal to declare plaintiff competent, and for failure to administer property of plaintiff allotment.	Case dismissed on motion of Federal defendant	Received Dec. 3, 1962; closed Nov. 27, 1963.
161. John Dodge, et al., v. Raymond Nakai, et al., USDC, Ariz.	Action by Navaho Indians and others who created nonprofit corporation to carry out purposes of OEO program and to enjoin Navaho Tribal chairman and area director from interfering with actions taken by corporation.	Action dismissed as to Federal definition on motion of United States. Final judgment partly in favor of plaintiff and partly in favor of defendant subsequent to granting of motion to dismiss as to Federal defandent.	Received Oct. 24, 1968; closed June 12, 1969.
162. Columbia Credit Corp. v. Frank Lamore, St. Ct., Colo.	Request that United States appear amicus curiae in case concerning defenses available to Indians in certain types of contract cases involving trust or restricted property.	United States filed brief as amicus curiae. (Case ultimately disposed of by dismissal.)	Received Nov. 9, 1967; closed Jan. 27, 1969. Case not closed until after trial date. Amicus brief filed Feb. 14, 1968.
163. In re Lewis B. Holt, Idaho	Request by Nez Perce Indian Tribe to collect tribal loan of $6,000.00 from Lewis B. Holt, an Indian, to whom the Tribe had granted loans dating back some 14 years.	Case closed in absence of request for action from Department of Interior. (The original request submitted to U.S. Attorney directly by tribe.)	Received Aug. 16, 1966; closed Feb. 7, 1967.
164. US v. Gordon K. Holton USDC; Mont	Action to recover damages for failure to remove timber under sales contract.	Case disposed of by compromise and money damages collected in the amount of $200.	Received Sept. 17, 1953; closed Nov. 6, 1962. Case involved extensive negotiations and investigation prior to filing complaint on Dec. 22, 1954.
165. James Holy Eagle, et al., v. L. P. Towle, USDC, S.D.	Action to enjoing leasing of Indian allotted land for grazing, naming as defendant the superintendent of the Pine Ridge Indian Agency.	Case dismissed and judgment in favor of defendant entered.	Received Dec. 15, 1961; closed Feb. 5, 1965. Case involved appeal to 8th circuit on 1 issue.
166. James Holy Eagle, et al. v. L. P. Towle, individually and as superintendent of the Pine Ridge Ind. Res., USDC, S.D.	Action to enjoin Towle and Ooglala Sioux Tribe from collecting tribal tax allegedly repealed and for accounting.	Action dismissed for lack of prosecution	Received June 3, 1963; closed Nov. 3, 1964.
167. In re Hoonah Indian Association, Alaska	Proposed action to clear title to Indian lands	No action filed for reason that questions raised were very complicated requiring considerable work by BIA before any court proceedings could be commenced. Justice Department file placed in abeyance pending receipt of administrative record from BIA.	Received Aug. 2, 1965; closed Arp. 22, 1966, pending compilation of administrative record.

Name of case or claim and court in which filed	Subject	Result or status	Remarks
168. Amos A. Hopkins v. U.S., et al, WD, Okla	Action by Kiowa Indian to have his share of tribal property paid to him.	Action dismissed on motion of Federal defense for lack of jurisdiction.	Received Mar. 31, 1964; closed Oct. 13, 1964.
169. Amos A. Hopkins v. Stewart Udall, SD, Cal.	Action to require issuance of Indian allotment patent and to recover $50,000 for malicious damage to plaintiff reputation.	do	Received Dec. 2, 1964; closed Nov. 1, 1965.
170. Amos A., Grace K., and Satanta N. Hopkins, et al. v. U.S. and Stewart L. Udall, SD, Cal.	Action to enjoin classification of land and interference with plaintiff settlement on land, and to require issuance of patents.	Trial court ordered summary judgment in favor of Federal defense which opinion was affirmed by 9th Circuit.	Received Apr. 30, 1965; closed Oct. 22, 1969. Action involved extensive litigation of issues, including denial of defense motion to dismiss or, disposal of case on motion of summary judgment. Judgment of circuit court of appeals rendered July 10, 1969.
171. In re Anthony Hoppowit, Ore	Request for United States to represent Yakima Indians arrested for fishing in violation of State law.	Case closed by dismissal and Government prevailed.	Received May 24, 1966; closed Mar. 27, 1967. Tribal attorney also participated in defense and jury returned nonguilty verdict in State circuit trial.
172. In re Del Hoptowit, St. Ct., Wash	do	Defendant prevailed at trial court in St. Court of Washington, which was affirmed by the Washington State Supreme Court. United States appeared on behalf of Indian defense along with tribal attorney.	Received May 24, 1966; closed August 20, 1968.
173. In re Delno Dee Hoptowit, Ore	Request that United States represent Indian arrested by State fishing officials.	Case disposed of by dismissal in favor of defense	Received October 11, 1966; closed February 28, 1967.
174. Calvin Howe, et al. v. US, USDC, S.D	Action by Indians for compensation for lands taken for Fort Randall Dam and Reservoir.	Case disposed of by compromise to satisfaction of all parties, for $8,750.	Received Apr. 4, 1969; closed Dec. 22, 1970.
175. Edward Everette Howe v. US, USDC, S.D	Same as case No. 174	Case disposed of by compromise for sum of $5,250	Received Apr. 7, 1969; closed Dec. 22, 1970.
176. In re Harry Howell, N.M	Request to remove obstructions from pueblo land	Matter satisfactorily resolved through discussion between parties prior to filing action so no legal suit filed.	Received Apr. 21, 1965; closed May 9, 1966.
177. Ray and Dorle Howell v. Navajo Tribe, US, et al., USDC, N.M.	Action against United States and Indian tribe based on alleged breach of contract by tribe.	Case dismissed on motion to dismiss Federal defense on Dec. 4, 1967.	Received Aug. 25, 1967; closed Feb. 9, 1968.
178. Thomas J. Huff, administrator with will annex of the estate of Wook-kah-nah, deceased, et al. v. Fred A. Seaton, USDC, D.C.	Action to review decision of Secretary of Interior in Indian probate, which decision approved will and directed distribution of estate.	Government lost at district court level but prevailed on appeal to court of appeals for District of Columbia. The case was remanded to district court on Dec. 20, 1962, and a district court order was subsequently issued granting the Government motion for summary judgment and dismissing the case with prejudice.	Received Aug. 18, 1960; closed Apr. 22, 1963.
179. William Alfred Huff v. Dept. of Int. and Stewart L. Udall, USDC, Ore.	Action to review Secretary determination that an Indian was in need of assistance under Klamath Termination Act.	Government motion for summary judgment granted	Received Nov. 16, 1961; closed Apr. 2, 1962.
180. The Hughes Co. Soil & Water Conservation Dist. v. Certain land allotted to David Bruner, ED, Okla.	Action to condemn allotted Creek Indian land	Satisfactory award made in the amount of $5,000	Received Aug. 2, 1963; closed May 19, 1964.
181. Stephen Douglas Hughes v. US, WD, Mo	Action by Indian to compel allotment under 25, U.S.C., 345, which allotment was to be carved out of Forest Service land.	Case transferred to USDC, Oregon, and dismissed on motion of Government.	Received July 9, 1962; closed May 27, 1964.

182. In re Gus Hummingbird, ED, Okla	Request to cover rent due on lease payments concerning Indian allotment land.	Claim was discovered to be uncollectible and case closed.	Received Nov. 2, 1961; closed May 23, 1962.
183. US v. Jack Hunt, USDC, S.D.	Action to enjoin grazing by livestock of non-Indian husband of Indian tribal member on the Indian tribal land.	Case disposed of by stipulation for dismissal and agreed settlement.	Received July 14, 1964; closed Oct. 25, 1965.
184. US v. J. C. Hurst, et ux., E.D., Okla	Action to recover possession of Seminole Indian allotment.	Subsequent to filing of complaint, defendant removed all property and livestock from the premises and the action was dismissed without prejudice.	Received Jan. 14, 1970; closed July 10, 1970.
185. In re Lloyd Hurst, WD, Wash	Request for action to recover $1,300 for timber trespass.	No action filed as trespasser's estate was insufficient to satisfy claim.	Received Aug. 9, 1966; closed Mar. 15, 1967.
186. In re M. B. Hurst, ND, Okla	Request for eviction of trespasser from Indian allotment.	No action filed as trespasser had vacated premises. No suit for money damages filed since trespasser's present address unknown.	Received Nov. 18, 1963; closed Apr. 23, 1964.
187. In re A. J. Hutton, N.D. Okla	Request for eviction of former lessee from Indian land.	No action filed since trespasser arranged with unrestricted heirs to rent allotted land at mutually agreeable rental payments	Received Sept. 9, 1964; closed Feb. 5, 1965.
188. Idaho v. Estate of Peter Nicodemus, et al, USDC, Idaho.	Condemnation of Indian allotment	Settlement agreeable to all parties reached, and case disposed of by stipulation and dismissal.	Received June 22, 1966; closed Sept. 13, 1966.
189. Independent School Dist. of Osage Co. v. Certain land and Harold West, ND, Okla.	Condemnation of Osage allotment	Case disposed of by dismissal filed by plaintiff	Received Apr. 16, 1964; closed June 8, 1964. Plaintiff withdrew action upon being advised by Government attorney that Indian allottee desired to fight condemnation.
190. US v. Isaac and Irene Iron Cloud, USDC, S.D.	Action to recover $41,000 tribal loan to Indian	Government motion for summary judgment granted and satisfaction of judgment obtained.	Received Sept. 16, 1966; closed Nov. 13, 1968.
191. In re Andrew Jackson, St. Ct. Wash	Request for United States to represent Yakima Indians arrested for fishing in violation of State law.	United States appeared and moved for dismissal, case disposed of by dismissal upon that motion.	Received May 24, 1966; closed Feb. 28, 1967.
192. In re John Donaldson. No court. Ariz	Proposed action to prevent interference with water rights of Papago Indian Reservation.	Request for action withdrawn by Department of Interior after agreement was reached with interfering party, which had been issued permit by State agency.	Received June 12, 1964; closed Nov. 2, 1965.
193. In re Orie E. Dosdall. No court. Montana	Requested action to recover damages for removal permanent improvements by lessee ($5,300).	Case closed due to lack of sufficient evidence to substantiate claim.	Received Sept. 22, 1969; closed Apr. 15, 1970.
194. Douglas County Public Utility Dist. No. 1 v. US. USDC, ED Wash.	Condemnation of Indian land	Case settled in amount satisfactory to Interior Department.	Received Aug. 16, 1966; closed Sept. 21, 1967.
195. In re Charles Durant. No court. Minn	Proposed action to recover $114 for timber trespass	Case was closed since amount in controversy was insufficient to justify further collection effort after demand letters were sent but went unacknowledged.	Received Apr. 13, 1966; closed Aug. 31, 1966.
196. US v. Earl F. Emmons and the Andreas Corp. USDC, SD, Calif.	Action to recover rent due under business lease on Palm Spring Indian allotment and to set aside Indian's agreement for extension of lease.	Lower court decision in favor of defendant was reveresed in favor of United States on appeal to the U.S. Court of Appeals for the 9th Circuit.	Received Sept. 12, 1960; closed Jan. 17, 1966.
197. City of Espanola v. US and the Pueblo of Santa Clara. USDC, N. M.	Condemantion of tribal land	Judgment in amount satisfactory to Department of Interior.	Received Apr. 14, 1964; closed May 5, 1965. This was the 2d of 2 cases involving the same subject matter. The 1st case was dismissed because parties were negotiating another location for the project for which the land was sought.
198. Essley v. Las Vegas Trust, et al., Osage County Dist. Ct., Okla. (later removed to USDC, ND, Okla.).	Action to cancel Osage tribal lease and to recover damage.	Case dismissed on Government motion	Received Dec. 1, 1964; closed June 1, 1966,

Name of case or claim and court in which filed	Subject	Result or status	Remarks
199. Evans v. Carrier. Pittsburg County Dist. Ct., Okla.	Action to quiet title to certain lands	Land in dispute was unrestricted and since the Government thus had no interest in the land, it was not a party and took no interest in the case. The only reason for the Government's identification with this case was the requirequirement for notice served upon the superintendent of the Five Tribes under the 1926 Act of Congress.	Received Sept. 23, 1970; closed Oct. 6, 1970.
200. Raymond Faithful v. United California Bank, et al., USDC, Oregon.	Action involving trusts established under the Klamath Termination Act.	Case dismissed since neither Government nor any officer thereof was held to be a proper party to the action.	Received Feb. 9, 1962; closed Mar. 22, 1962.
201. In re Sue and Bob Falling, USDC, ED, Okla.	Proposed bankruptcy action involving loans made by Cherokee Tribe to members of tribe.	Request for action withdrawn	Received Feb. 1, 1968; closed May 8, 1968.
202. U.S. v. Farmers Mutual Insurance Co. USDC., Nebr.	Action to collect proceeds of fire insurance policy on improvements on Indian leased land.	Case disposed of by compromise ($4,000 claim compromised for $2,500).	Received Nov. 1, 1965; closed June 15, 1967.
203. Ferrucci v. Forrest Kinley. King County Superior Ct., Wash.	Proposed action against Indian tribe and its chairman to collect on a $1,500 printing bill.	Defendants were served, but plaintiff never pursued his claim, and the case was closed.	Received Oct. 19, 1964; closed Dec. 29, 1964.
204. In re Nick Fettig. No court. ND	Proposed action to recover $400 for failure of lessee of Indian land to strip his crop as required by lease.	Payment of claim in full was tendered and accepted.	Received Apr. 16, 1968; closed July 1, 1968.
205. In re William Field. State of Okla	Request for action to collect rent and damages for failure to make improvements under lease of allotted Indian lands.	Case compromised ($260 claim compromised for $150).	Received Oct. 28, 1969; closed Feb. 18, 1970.
206. F. W. Files, administrator of Estate of Flora B. Lopez v. Howard F. Johnson, Supt. of Osage Indian Agency. USDC, ND Okla.	Action to require payment of Osage head right	Case dismissed after superintendent delivered amount claimed.	Received June 10, 1966; closed Oct. 5, 1966.
207. In re Wilbur W. Finch. No Court. NC	Proposed action to cancel lease of tribal land	No need for action since defendant complied with provisions of lease.	Received Dec. 23, 1965; closed July 25, 1966.
208. US v. Fish. USDC, CD, Calif	Action to eject from national forest persons claiming entitlement as applicants for Indian homestead allotment.	Summary judgment in favor of Government. Defendants were found to be illegally occupying land as trespassers without right to an Indian allotment.	Received Jan. 3, 1969; closed Feb. 16, 1970.
209. Ed. Fletcher Co. v. Hickel. USDC, SD, Calif.	Action to establish road right-of-way across Las Coyotes Indian Reservation and to enjoin interference.	Action dismissed on motion of Government (defendant included named members of the tribe).	Received Mar. 20, 1970; closed Jan. 25, 1971.
210. US v. Fletcher, USDC, ED, Okla	Action to eject former lessee and recover $115 rent.	Default judgment in favor of United States. Nothing collected; but defendant vacated property.	Received Apr. 2, 1964; closed Feb. 1, 1965.
211. Flying Diamond Land & Mineral Corp. v. Bastian, et al.	Interpleader to determine who is entitled to royalties under Utah State spacing program for oil wells where restricted Uintah and Ouray lands are included in well drilled under 320-acre spacing order.	United States represented defendant Indians. Judgment entered for Indians.	Received Oct. 28, 1969; closed Feb. 18, 1970.
212. Fontenelle v. Omaha Tribe of Nebraska, USDC Nebr.	Action against Indian tribe to quiet title to certain land.	Judgment for plaintiff affirmed on appeal by U.S. Court of Appeals for the 8th Circuit.	Received Jan. 12, 1965; closed Mar. 24, 1971.
213. In re Daniel E. Forsyth. No Court, Wisconsin.	Proposed action to set aside unapproved conveyance of restricted land.	A determination was made that cause of action need not be filed. Case handled administratively.	Received May 11, 1967; closed Apr. 25, 1968.

214. In the Matter of the Application of the City of Fort Smith to condemn tribal land. USDC WD, Ark.	Condemnation action to take Indian lands	Case dismissed on plaintiff's motion	Received May 24, 1962; closed June 8, 1962.
215. Foster v. First National Bank of Oregon. USDC, Oregon.	Action to certify constitutionality of Klamath Termination Act under 28, U.S.C., sec. 2403, and to set aside trust by withdrawing Indian, now an adult who was a minor when trust was established.	Government was not a party to this proceeding; summary judgment was entered in favor of plaintiff terminating minor's trust upon attaining majority.	Received July 2, 1962; closed Apr. 30, 1963.
216. In re W. H. Frank. No Court. Oklahoma	Request for action to collect damages for failure to comply with development requirements of an Indian lease ($550 damages).	Case disposed by payment of claim in full in lieu of completing improvements.	Received May 2, 1969; closed July 7, 1969.
217. Frank v. US, et al., USDC, WD, Wash	Action to enjoin State of Washington from regulating Nisquilly Indian fishing activities.	Government motion to dismiss this case upheld on basis of U.S. Supreme Court decision in the Puyallup Indian fishing cases.	Received Apr. 13, 1966; closed Dec. 4, 1968.
218. Frazier v. Doremus, USDC, ED, Okla	Action to recover possession of Five Tribes land claimed by defendent under a tax deed.	Issue of whether statute of limitations runs against Indian land where a tax exemption certificate is of record was decided in favor of defendant claiming under tax deed against restricted Indian plaintiff represented by United States.	Received May 11, 1961; closed Oct. 4, 1962.
219. U.S. v. Frisbie, USDC WD, Calif	Action to recover $1,700 treble damages for timber trespass.	Default judgment in favor of plaintiff. No prospect of collection as shown by investigation.	Received Jan. 26, 1966; closed Dec. 15, 1969.
220. Fry v. US, et al., US DC, ED, Wash	Action to require acceptance of bid relating to sale of timber from Colville Indian Reservation.	Case dismissed on planitiff's motion	Received Aug. 21, 1967; closed Dec. 8, 1967.
221. US v. Gaither, USDC, ED, Okla	Action to quiet title to Choctaw-Chickasaw land	Default judgment in favor of United States on behalf of tribe.	Received Feb. 11, 1965; closed May 31, 1966.
222. Garcia v. US, USDC, CD, Calif	Action for declaratory judgment that plaintiff is entitled to Indian allotment in California.	Judgment in favor of Government	Received Jan. 9, 1970; closed July 30, 1970.
223. Garvie v. Krause, USDC, ED, Calif	Action against officials of the Department of Interior and State of California for illegal per capita payment.	Government motion for dismissal sustained	Received Feb. 28, 1969; closed Apr. 13, 1971.
224. Matter of Gene Gentry. Klamath County Circuit Ct., Oregon.	Action to set aside determination by Secretary of Interior.	Consent decree entered on behalf of plaintiff	Received Aug. 23, 1961; closed June 20, 1962.
225. In re Leroy Gienger. No Court. Oregon	Claim for double damages for timber trespass on tribal land.	Claim of $2,510.12 compromised for $1,255.06	Received July 31, 1961; closed June 15, 1965. Defendant settled by paying only actual damages instead of double damages.
226. In re Gila River Pima-Maricopa Indian Community. No Court. Arizona.	Request by Secretary of Interior for suit to enjoin Indians of Gila River-Pima Maricopa Community from drilling and operating irrigation wells within the San Carlos Indian irrigation project.	A formal complaint and prosecution of a suit were never filed. Case was apparently closed without any action by Justice Department on behalf of Department of Interior.	Received October 1956; closed June 18, 1968.
227. In re Gila Valley Soil Conservation District & Lebanon Reservoir & Ditch Co. No Court. Ariz.	Proposed action to restrain possible interference with water rights of Gila River Indian Reservation.	Case was dropped after determination that no project was planned or underway that would interfere with rights of Indians.	Received Aug. 8, 1963; closed June 30, 1966.
228. In re Seaf P. Gimlin, et al. No Court. Ariz	Proposed action to determine boundary and title to Indian land.	Request by Department of Interior for action was withdrawn. Matter was settled administratively.	Received Nov. 24, 1961; closed Aug. 9, 1965.
229. In re Glenwood Taxidermy. No Court. Alaska.	Request by Department of Interior to recover various amounts due an Indian enterprise.	Request withdraw after determination that debtor firm was no longer in existence and was without attachable assests.	Received Dec. 8, 1966; closed Apr. 13, 1967.
230. US v. Goad, USDC, ND, Okla	Action to recover possession of Osage allotments from former lessees, and for damages.	Judgment on behalf of United States in amount of $800, in addition to injunction against further trespasses by defendant.	Received Apr. 8, 1965; closed Dec. 2, 1966.

Name of case or claim and court in which filed	Subject	Result or status	Remarks
231. Godowa v. National Bank of Portland, USDC Oregon.	Action to determine validity of provision of Klamath Termination Act allowing Secretary of Agriculture a year within which to decide to purchase tribal land.	Both parties agreed to a stipulation dismissing the suit without prejudice. Case dismissed.	Received June 11, 1964; closed Aug. 7, 1964.
232. US v. Goldstein. USDC, Ariz	Action to eject former lessees from Indian tribal land.	Default judgment in favor of plantiff	Received July 20, 1966; closed Oct. 29, 1968
233. In re John E. Goldmark No Court. Wash	Action to recover approximately $3,000 damages for timber destroyed by fire and for trespass on trust lands.	Claim of $3,020.10 compromised by collection of $2,500.	Received May 29, 1963; closed Dec. 11, 1963.
234. US v. Goldsboro Builders Supply Co., USDC, ED, NC.	Action to recover $29,000 damages for breach of timber sales contract involving timber on tribal land.	Claim of $28,906.40 compromised by collection of $15,000.	Received Dec. 7, 1967; closed June 15, 1971.
235. In re Chester Lee Gonzalis. No Court. Okla	Proposed action to recover possession of tribal land and for damages.	Trespasser voluntarily vacated property and $37.50 was paid in lieu of rent.	Received Nov. 4, 1964; closed Feb. 16, 1965
236. Grady County Soil & Water Conservation Dist. v. Albert Chambers, et al., USDC, WD, Okla.	Condemnation of Indian land	Judgment in amount satisfactory to the Department of Interior ($13,366).	Received Dec. 28, 1966; closed June 6, 1967.
237. In re Grady County No Court Okla	Proposed action to quiet title to Chocktaw-Chickasaw land.	Request for action was withdrawn. Matter was handled administratively with Department of Interior.	Received Apr. 9, 1965; closed July 18, 1966.
238. US and the Pueblo of Taos v. Grainger. USDC, NM.	Action to quiet title to tribal lands	Stipulated for dismissal entered and matter was settled through out-of-court negotiations.	Received Feb. 3, 1967; closed Apr. 3, 1968.
239. Grand River Dam Authority v. US, et al., USDC, ND, Okla.	Condemnation of allotted restricted land	Judgment in amount satisfactory to Department of Interior ($10,392.67).	Received Dec. 28, 1962; closed May 25, 1964.
240. Grand River Dam Authority v. George First, et al., USDC, ND, Okla.	do	Case closed since defendant, upon whose behalf appearance was made, had no interest in the land in question.	Received Apr. 30 ,1963; closed Sept. 6, 1963.
241. Grand River Dam Authority v. Snow, USDC, N.D., Okla.	do	Judgment in amount satisfactory to Department of Interior ($2,062.50).	Received May 3, 1963; closed Jan. 15, 1965.
242. Grand River Dam Authority v. Andrew Bark, et al., USDC, ND, Okla.	do	Judgment in amount satisfactory to Department of Interior ($3,800).	Received July 1, 1963; closed June 24, 1964.
243. Grand River Dam Authority v. Dick Littledave, et al., USDC, ND, Okla.	do	Judgment in amount satisfactory to Department of Interior ($8,670).	Received May 18, 1964; closed Aug. 13, 1965.
244. Grand River Dam Authority v. Nancy Campbell, et al., USDC, ND, Okla.	do	Judgment in amount satisfactory to Department of Interior ($700).	Received July 1, 1964; closed Mar. 22, 1965.
245. Grand River Dam Authority v. Owen Walters, et al., USDC, ND, Okla.	do	Case settled without court action by payment of amount satisfacytor to defendant ($100).	Received July 16, 1964; closed June 10, 1965.
246. Grand River Dam Authority v. Certain Parcels of land, Stan Hummingbird, et al., USDC, ND, Okla.	do	Case settled without court action by payment of amount satisfactory to defendant ($1,535).	Received Dec. 14, 1964; closed July 6, 1965.
247. U.S. v. C. D. Grant. USDC, ND, Okla	Proposed action to quiet title of Cherokee tribe to land omitted from allotment.	Trial Court, without a jury, found for defendant, and the Solicitor General decided not to appeal the decision.	Received Aug. 24, 1966; closed July 18, 1968.
248. Donald J. Gray, guardian of the estate of Simeon B. Riddle, Jr., a spendthrift, v. U.S., et al., USDC, Oregon.	Action to recover $23,277 alleged overpayment for property purchased by Klamath Indian from defendant.	Plaintiff was permitted to withdraw the complaint; stipulation of dismissal without prejudice.	Received Feb. 21, 1962; closed Feb. 12, 1963.

249. Gray v. Johnson, USDC, ND, Okla	Action to enjoin leasing or advertising for leasing Osage land.	Judgment for defendant (Indian agent) in district court was affirmed on appeal to the U.S. Court of Appeals, 10th Circuit.	Received May 19, 1966; closed Apr. 23, 1968. Plaintiff's petition for certiorari was denied by the U.S. Supreme Court.
250. Jess Green & Nez Perce Indian Association v. Angus A. Wilson, et al., USDC, Idaho.	Action by Nez Perce Indians against members of tribal council to have tribal constitution declared invalid and to enjoin defendants from acting as governing body.	Dismissal of suit against defendants was affirmed by the U.S. Court of Appeals, 9th circuit.	Received Aug. 1, 1962; closed Sept. 1, 1964. Justice Department filed representation of interest at trial level and amicus curiae brief on appeal.
251. Gritts v. The Cherokee Nation, et al., USDC, ED, Okla.	Action by heirs of former attorney for Cherokee Tribe to enjoin distribution of proceeds of judgment recovered in Indian Claims Commission case until principals are compensated for work done in 1920's and 1930's by decedent.	Plaintiff's motion to dismiss without prejudice granted by Federal district court.	Received June 4, 1963; closed Nov. 7, 1963.
252. In re Gulf States Land & Industries, Inc., & Insurance Company of North America, surety. No Court. ND.	Request for action to collect delinquent rent on 18 oil and gas leases covering Fort Berthold Indian allotments.	Case disposed of by payment of claim in full ($3,372.24).	Received Mar. 30, 1970; closed Jan. 11, 1971.
253. Hahn v. Davis. Rogers County Dist. Ct., Okla.	Action to quiet title against United States and Sequoyah Indian School.	Case dismissed on motion of Government	Received Oct. 18, 1968; closed Jan. 10, 1969.
254. Hale v. Gray. USDC, ED, Okla	Condemnation of allotted land	A determination was made administratively that no Indian interest was involved since land in question had been sold to a non-Indian prior to initiation of this action.	Received Jan. 22, 1965; closed Mar. 22, 1965.
255. Haley v. Winona Bear Robe, et al., Canadian County Dist. Ct., Okla.	Action to quiet title to accretionsa djacent to patented land of Cheyenne Arapaho Indian.	Case settled by compromise with plaintiff purchasing land in dispute for $5,033 and access arranged (United States represented defendant).	Received Apr. 11, 1967; closed Sept. 29, 1969.
256. U.S. v. Hall, USDC, ED, Okla	Action to recover $740 on agriculture lease of allotted land.	Judgment for plaintiff and payment in full by defendant.	Received Dec. 31, 1964; closed June 2, 1965.
257. In re Mrs. John D. Hall. NM	Proposed action to resolve boundary dispute (in nature of proposed action for trespass).	Case disposed of after Mrs. Hall sold her property; new owner made no claim of erroneous boundaries.	Received June 9, 1966; closed July 31, 1969. (Land Office survey of 1935 was questioned by Mrs. Hall, thus precipitating this case).
258. In re Ernest & Richard Lamb Hammrick. No Court. SD.	Grazing trespass on Indian land	Cattle were removed without initiation of court action.	Received Oct. 20, 1964; closed Jan. 9, 1967.
259. In re George F. & F. Mollica Honash. No Court. NM.	Proposed action to recover $880 due on uranium leases on allotted land.	Case disposed of by payment of claim in full without court action ($880).	Received Nov. 9, 1960; closed Feb. 20, 1962.
260. In re Burl Hanson. No Court. Wyoming	Proposed action to collect operation and maintenance charges on Indian irrigation project.	Case compromised by collection of $605.48 on claim of $684.57.	Received Jan. 12, 1967; closed Dec. 7, 1967.
261. U.S. v. John Hanson, et al., USDC, WD, Wisc.	Action to recover $252 as balance due for timber trespass.	All but $6 of balance due was eventually collected without court action.	Received July 16, 1962; closed July 23, 1964.
262. U.S. v. A. D. Haraway, et al., USDC, ED, Okla.	Action to quiet title to Choctaw-Chickasaw land	Default judgment for plaintiff	Received Jan. 5, 1965; closed Dec. 21, 1965.
263. U.S. v. Paul D. Hardy, et al., USDC, Utah	Action to recover $954 in delinquent operation and maintenance assessments on land in Unitah irrigation project.	Judgment for plaintiff in amount of $1,361.30	Received Jan. 20, 1964; closed Nov. 1, 1968. This case was complicated by a counterclaim of $3,300 which defendants filed against the government. The counterclaim eventually was settled out of court but delayed overall settlement of the case.
264. U.S. v. Hart. USDC, ED, Wash	Claim for unpaid rent under form lease	Judgment for plaintiff in amount of $446.42	Received Mar. 26, 1969; closed Nov. 17, 1970.
265. In re Maud Harwood. No Court. Mont	Request to collect operation and maintenance charges on Blackfoot irrigation project.	Claim of $45 was paid in full without court action	Received Sept. 14, 1965; closed May 2, 1966.
266. In re Claude & Raymond Hatch. No Court. NM.	Request for action to remove trespassers from Navaho Reservation.	Request for action was withdrawn after trespassers applied for membership in the tribe. Matter was handled administratively.	Received Feb. 16, 1959; closed Mar. 15, 1965.

Name of case or claim and court in which filed	Subject	Result or status	Remarks
267. In re Herman Hayes. No Court. NM	Request for action to recover $700 for alleged trespass on tribal land (removal of sand and gravel).	Case settled by negotiation without court action. Case returned to Department of the Interior.	Received Dec. 7, 1962; closed July 5, 1968.
268. In re Edward Haynes. Montana.	Collection of operation and maintenance charge on Blackfoot irrigation project.	Payment of claim in full ($1,292.98).	Received Sept. 14, 1965; closed May 18, 1966.
269. In the matter of the estate of Robert Hebah. Fremont County District Ct., Wyoming.	Claim by Indian for $300,000 under an 1860 treaty purportedly providing that the United States would pay for all wrongs done by whites against Indians.	Claim, in its initial posture, was examined, and a recommendation was made that the claim should be considered spurious until further developments transpired. Case was held in abeyance, and no further action by plaintiff followed this complaint. Case was then closed.	Received July 22, 1968; closed Feb. 13, 1970.
270. Heffelman v. Udall. USDC, ND, Okla	Action to set aside the Secretary of Interior's findings regarding heirs to estate of deceased Indian.	Dismissal of claim at trial level was affirmed on appeal to the United States Court of Appeals, 10th Circuit.	Received Mar. 22, 1966; closed Feb. 15, 1968. Plaintiff's petition for certiorari was denied by the United States Supreme Court.
271. Helton v. B.H. Butts, US, et al. USDC, WD, Wash.	Third-party complaint against United States and Indian tribe arising out of lease of tribal land.	Dismissal of suit on plaintiff's motion (with prejudice).	Received Feb. 9, 1966; closed Apr. 11, 1967.
272. Russell v. US, et al., USDC, WD, Okla	Condemnation for gas pipeline right-of-way over allotted Indian land.	Case dismissed at plaintiff's request	Received Dec. 31, 1969; closed July 7, 1970.
273. Hicks & Allred Pipeline Co. v. Centron Constr. Co., et al., USDC, SD, Calif.	Action to foreclose mechanic's lien on Indian allotment.	Stipulation and order dismissing United States as a party-defendant.	Received Dec. 17, 1963; closed Jan. 30, 1964.
274. Jack H. Hicks & Roy E. Allrd v. Frederick W. Stearns, et al., USDC, SD, Calif.	do	Court sustained Government motion to quash for lack of proper service in this action against Indian defendants.	Received Aug. 9, 1963; closed Sept. 21, 1964.
275. Jack H. Hicks and Roy E. Allred v. Centron Constr. Co., Hyatt Chalet Motels, Inc., et al., USDC, SD, Calif.	do	Stipulation and order dismissing United States as a party-defendant.	Received Nov. 27, 1963; closed Jan. 29, 1964.
276. Hill v. Pioneer Trust Co., Stewart L. Udall, Sec. of Interior, USDC, Oregon.	Action to set aside a trust created by Secretary under Klamath Termination Act.	Judgment on the merits in favor of defendants	Received Jan. 9, 1962; closed Oct. 17, 1962.
277. In re Hiram Ash, Inc. No Court, N.Y.	Request for an accounting from a contractor dealing with Indian tribe.	Accounting was voluntarily provided	Received Mar. 17, 1969; closed Aug. 28, 1970.
278. US v., Hoagland, USDC, NM	Action to recover $4,321 for failure to complete logging contract on Indian land.	Claim of $4,321 compromised for $3,000	Received Mar. 17, 1966; closed Nov. 10, 1968.
279. US v. Hoisington, USDC, WD, Okla	Action to enjoin lessee of Indian land from constructing boundary fence as required by lease.	Judgment for plaintiff (United States here sought to enjoin defendant from initiating a court action to enjoin lessee of Indian land from erecting a boundary fence; a new survey of the boundary of the disputed land eventually was conducted and the boundary was established to satisfaction of all parties.	Received Oct. 14, 1960; closed Apr. 3, 1962.
280. Holdge v. US, et al., USDC, CD, Calif	Action for Indian allotment in Los Padres National Forest.	Judgment for defendant	Received June 25, 1969; closed May 7, 1970.
281. LaFontaine v. US, USDC, Minn	Action by Indian on behalf of tribe to recover $1,000,000 for failure to furnish services required by treaty.	Case dismissed for failure to state claim upon which relief can be granted.	Received Nov. 25, 1966; closed June 15, 1967

282. LaJeunesse v. Hickel, USDC, Wyoming	Action to enjoin classification of public lands for multiple use and thereby removing them from availability for Indian allotments.	Case dismissed on Government's motion for failure to state a cause of action.	Received Nov. 3, 1969; closed July 23, 1970.
283. In re Latimer County, Okla., USDC, ED, Okla.	Request for action to quiet title to Choctaw-Chickasaw land.	Department of Interior withdrew request for action.	Received Jan. 22, 1965; closed Mar. 2, 1965.
284. Lawrence v. US, et al., USDC, SD, Calif	Action for specific performance of alleged contract to convey Indian allotment or, in alternative, to recover $1,000,000 damages.	Judgment dismissing plaintiff's action was affirmed on appeal to U.S. Court of Appeals, 9th Circuit.	Received Sept. 29, 1965; closed Mar. 22, 1968. Plaintiff's petition for certiorari was denied by the U.S. Supreme Court.
285. U.S. v. Lawrence. USDC, CD, Calif	Action to eject trespasser from Indian allotment (companion case to 284).	Stipulation for dismissal after deferrment agreed to deliver immediate possession of lands to the Indian landowner.	Received May 14, 1968; closed Oct. 10, 1969.
286. Frank and Rose Lawrence v. US, et al., USDC, WD, Wash.	Claim by restricted Indian that Government officials were negligent in completing a land sale.	Case dismissed for mootness due to outcome of certain other litigation.	Received Apr. 4, 1969; closed June 9, 1969.
287. City of Lawton v. 1.34 Acres of land, US, et al., USDC, WD, Okla.	Condemnation of allotted Indian land	Judgment in amount satisfactory to Interior Department ($300).	Received Nov. 3, 1960; closed Jan. 19, 1962.
288. City of Lawton v. 1.57 acres of land, US, et al., USDC, WD, Okla.	do	Judgment in amount satisfactory to Interior Department ($1,250.00).	Received Nov. 3, 1960; closed Jan 23, 1962.
289. City of Lawton v. 0.94 acres of land, US et al., USDC, WD, Okla.	do	Judgment in amount satisfactory to Interior Department ($50).	Received Nov. 3, 1960; closed Apr. 3, 1962.
290. City of Lawton v. 2.28 acres of land, US, et al., USDC, WD, Okla.	do	Judgment in amount satisfactory to Interior Department ($900).	Received Jan. 4, 1961; closed Jan. 23, 1962.
291. City of Lawton v. 1.37 acres of land, US, et al., USDC, WD, Okla.	do	Judgment in amount satisfactory to Interior Department ($2,000).	Do.
292. City of Lawton v. 4.27 acres of land, US, et al., USDC, WD Okla.	do	Judgment in amount satisfactory to Interior Department ($427).	Received Aug. 14, 1961; closed Aug. 7, 1962.
293. City of Lawton v. 2.54 acres of land, US, et al., USDC, WD, Olka.	do	Judgment in amount satisfactory to Interior Department ($329).	Received Aug. 19, 1961; closed Aug. 7, 1962.
294. US and Lewis Barnes v. Donald L. Leach, et al., USDC, SD, Calif.	Proposed action to quiet title to land distributed to Indians under Rancheria Termination Act.	Judgment for plaintiff and compromise settlement sale and transfer of certain land parcels along disputed boundary of adjacent parcels of land.	Received Nov. 12, 1965; closed Apr. 23, 1969.
295. Ike Leaf, Melvin M. Belli, Frederick A. Cone, et al., v. Udall USDC, ND, Calif.	Action to require Secretary of Interior to approve tribal-attorney's contract.	Complaint dismissed for failure to state a claim upon which relief could be granted.	Received Sept. 17, 1964; closed June 25, 1965. 10th Circuit affirmed on appeal.
296. Juanita Lincoln Learned v. Cheyenne-Arapaho Tribes of Okla, et al. Canadian County District Ct. (later removed to US DC, WD, Okla.).	Action by defeated candidate in tribal election to enjoin seating of successful candidate.	Judgment for plaintiff on merits in State court after case was remanded from Federal district court.	Received Feb. 3, 1966; closed Feb. 17, 1967.
297. US v. O. L. Ledgerwood et al., USDC, WD, Okla.	Action to cancel oil and gas lease on allotted land and to establish title to leased equipment.	Judgment for plaintiff on merits	Received Aug. 27, 1963; closed Sept. 28, 1965.
298. Frederick V. Lefthand v. Crow Tribal Council et al.	Action to enjoin Crow Tribal Council and Secretary of Interior from effectuating certain resolutions of the tribal council.	Dismissal of complaint on Government motion	Received Feb. 17, 1971; closed June 17, 1971.
299. In re Virgil C. Lenhart, USDC, Ariz	Action to recover damages for failure to complete timber cutting contracts on tribal land.	Judgment for United States against defendant, but collection of $114,207.76 due Apache Tribe proved futile as a result of bankruptcy proceedings initiated by defendant.	Received May 2, 1960; closed Nov. 6, 1963.
300. State v. Evans Lewis. Klickitat County Superior Court, Wash.	Representation of Yakima Indian arrested for alleged violation of State fishing laws.	Case dismissed on motion of prosecutor	Received May 24, 1966; closed Feb. 28, 1967.
301. Gary Carson Lewis, et al. v. General Serv. Ad, et al., USDC, SD, Cal.	Suit to enjoin GSA from selling surplus property and to have the court declare that plaintiffs have the right to Indian allotments.	Dismissal of action on Government motion was affirmed on appeal to 9th Circuit.	Received Mar. 8, 1965; closed Sept. 27, 1967.

Name of case or claim and court in which filed	Subject	Result or status	Remarks
302. Re Lewiston Lime Co. No Court. Idaho	Request for action to enjoin former lessee from removing limestone from Nez Perce tribal land.	Request for action was withdrawn by Department of Interior.	Received Nov. 1, 1962; closed Nov. 29, 1962.
303. US v. Lichy, USDC, WD, Pa	Action to recover $150 due on education loans	Judgment for plaintiff; $85.50 collected as payment in full (payment was in $5 installments over 4 years).	Received May 26, 1960; closed Feb. 15, 1965.
304. Re George C. Lieuallan, No court, Ore	Proposed action to recover $712 for fire suppression costs and for property damages to Indian allotments.	Case was forwarded to Department of Interior, since it did not meet direct reference requirements. No further request for action from Interior was received.	Received Nov. 23, 1960; closed Jan. 4, 1962.
305. Littell v. Udall, USDC, D.C	Action to enjoin Secretary of Interior from termination or withdrawing approval of plaintiff attorney contract with Navaho Tribe (see No. 306 and 307 below).	Judgment for plaintiff was reversed on appeal to Court of Appeals, District of Columbia.	Received Nov. 18, 1963; closed Mar. 15, 1968. Case involved resolution of several interlocutory questions that were frequently appealed by both sides.
306. Littell v. Nakai, USDC, Ariz	Action by tribal counsel to enjoin tribal chairman from interfering with performance of attorney contract (see No. 305 above and 307 below).	Order quashing temporary restraining order and dismissing case was affirmed on appeal to 9th circuit.	Received Feb. 14, 1964; closed Jan. 24, 1966. Plaintiff petition for certiorari was denied.
307. Re Norman M. Littell, No court. D.C	Request for action to recover $105,000 attorney fees paid under compulsion of preliminary injunction in Littell v. Udall and for an accounting for value of General Counsel Attorney services diverted to claims work (see No. 305 and 306 above).	Case was disposed of since it was determined not to institute a suit in the name of the United States during pendency of Littell v. Udall.	Received Oct. 18, 1967; closed Dec. 4, 1967.
308. U.S. v. Wallace and Millie Little, USDC, S.D	Action to recover loan by tribe to Indians	Claim of $38,000 compromised by collection of $30,205.69.	Received Sept. 16. 1966; closed Mar. 26, 1969.
309. Re Francis Lockhart, USDC, ND, Cal	Action to recover $672 for timber trespass	Case disposed of by payment in full	Received Feb.12, 1963; closed Nov. 12, 1964.
310. U.S. v. Clayton Long, USDC, Wyo	Action to recover damages for grazing trespass	Csae disposed of by payment of claim in full	Received Feb. 26, 1965; closed Mar. 3, 1965.
311. Rose Looking v. Robert Westland, Valley Co. Dist. Ct., Mont.	Action to declare as void a deed to restricted property of a Fort Peck Indian.	Case disposed of after defendant, by quitclaim deed, conveyed any interest in the restricted land to plaintiff.	Received Sept. 16, 1969; closed Mar. 20, 1970.
312. In the Matter of Dally Lotches, USDC, Ore	Action to set aside determination of competency under the Klamath Termination Act.	Case dismissed on Government motion after plaintiff failed to follow up on his complaint.	Received Aug. 9, 1961; closed Feb. 16, 1962.
313. Mary Ada Lotches v. Portland Nat. Bank, USDC, Ore.	Action to set aside trust agreement under Klamath Termination Act.	Case dismissed on Government motion and stipulation.	Received May 29, 1961; closed May 7, 1962.
314. Lucero v. Lucero, USDC N.M	Action to enjoin tribal council from issuing permits for grazing on tribal land.	Case dismissed with prejudice on Government motion.	Received June 11, 1964; closed Sept. 17, 1964.
315. Re Everett Lund, No Court, Wis	Proposed action to enjoin continuing trespass by defendant claiming right-of-way by necessity across Indian allotment.	Law suit was determined to be unnecessary as a result of Indian's self-help (allottee built house across the road that Lund was using).	Received May 28, 1965; closed May 2, 1966.
316. Re Scott Lusty, No Court. Utah	Request for action to recover delinquent operation and maintenance assessments in amount of $132 on land in Uintah irrigation project.	Case disposed of by payment of claim in full	Received Jan. 20, 1964; closed Aug. 24, 1965.
317. Re City of McAlester, Okla. No court, Okla	Proposed action to quite title to Choctaw-Chickasaw tribal land (com. case to No. 318).	No suit was necessary because city and county officials executed quitclaim deeds to tribe (see No. 318).	Received June 29, 1965; closed Nov. 14, 1967.
318. Re McAlester Watershed. No Court, Okla	Proposed quite title action to Choctaw-Chickasaw tribal land (com. case to No. 317)	Request for action withdrawn after local officials executed quitclaim deeds to tribe (see No. 317).	Received June 28, 1965; closed Mar. 13, 1969.

319. US v. McCasland, USDC S.D.	Action for grazing trespass	Negotiated settlement followed by stipulation and dismissal.	Received May 1, 1968; closed July 29, 1970.
320. McCloud v. US, et al. USDC, Nev.	Action to enjoin disposition of land claimed by plaintiff under Indian Homestead Act.	Judgment on merits for defendant	Received Mar. 18, 1966; closed July 21, 1970.
321. McColm v. Bohling. Hidalgo Co. Dist. Ct., N.M.	Action for writ of garnishment against Fort Wingate Indian School.	Case dismissed on Government motion	Received Dec. 2, 1970; closed Feb. 1, 1971.
322. Re. McCurtain County, Okla., No court. Okla.	Request for action to quiet title to Choctaw tribal land.	Interior Department withdrew request. No action taken.	Received Jan. 7, 1965; closed Mar. 2, 1965.
323. Re McCurtain Co., Okla. No court. Okla	Action to quiet title to land conveyed for cemetery lots (former Choctaw-Chickasaw land conveyed to county for cemetery use only was allegedly used in a manner involving mineral rights to land).	Matter returned to Department of Interior for further administrative action in lieu of court proceedings.	Received Apr. 27, 1965; closed May 18, 1966.
324. US v. McCurtain Co., Okla., USDC, ED, Okla.	(See No. 323 above)	Judgment for plaintiff (in this action involving other cemetery plots, quiet title proceedings were instituted; see No. 323, companion case).	Received May 14, 1965; closed Dec. 20, 1967.
325. Re Myrtle McKee. No court, Montana.	Request for collection action for delinquent operation and maintenance charges on Blackfoot irrigation project.	Case disposed of by payment of claim in full ($1,215).	Received Sept. 15, 1965; closed May 18, 1966.
326. Re McLain, Mayes, and National Surety Co. No Court, N C.	Request for action to recover $240 delinquent rent on certain tribal leases.	Case disposed of by payment of claim in full	Received Apr. 6, 1964; closed June 22, 1964.
327. McLean v. Hickel, USDC D.C.	Action to set aside approval by Secretary of Interior of one will and disapproval of another will of deceased Rosebud Sioux Indian.	Summary judgment for defense affirmed on appeal to Court of Appeals, District of Columbia.	Received Sept. 30, 1969; closed June 3, 1971.
328. US v. McLeod, USDC, WD, Wash	Action to remove liens from trust property	Default judgment for plaintiff (judgment quieting title in plaintiff).	Received Feb. 19, 1963; closed Aug. 25, 1966.
329. McNair v. First Nat. Bank of Nevada, et al., USDC, Nev.	Action to obtain ¼ interest in estate of Klamath Indian.	Stipulation and order entered for dismissal with prejudice.	Received Dec. 6, 1967; closed Feb. 3, 1969.
330. McNair v. United California Bank, et al., USDC, Oreg.	Action for determination that Klamath Indian is competent to manage his own affairs and for direct payment of $43,000.	Consent decree entered for plaintiff	Received May 12, 1961; closed Apr. 4, 1962.
331. M & S Builders, et al. v. Roy Fey, et al. No court, Cal.	Notice filed with Justice Department of intention to file mechanic's lien against Indian property.	No further information was received on this matter and apparently no further action was taken by plaintiff. Case was then closed.	Received Nov. 20, 1963; closed May 21, 1964.
332. Mack Oil Co., et al. v. Ned Nora, USDC, WD, Okla.	Action by oil and gas lessee against Indian allottee lessor to establish that lease has not expired and for other findings.	Compromise settlement was negotiated after judgment was entered for plaintiff.	Received Nov. 18, 1966; closed Mar. 11, 1969.
333. Mallory v. Amerada Petroleum Corp., et al., Stark Co., Dst. Ct., N.D.	Request that unapproved assignment of royalty interest be declared void.	Complaint dismissed for lack of jurisdiction in State court.	Received Feb. 20, 1969; closed Nov. 26, 1969. United States represented defendant Indians in this matter involving a dispute over the ownership of royalty interest in oil and gas lease.
334. US v. C. W. Manar, et al., USDC, E.D., Okla.	Action to quiet title to Choctaw-Chickasaw tribal land.	Default judgment entered for plantiff	Received Jan. 5, 1965; closed Jan. 13, 1967.
335. Town of Mannford v. Eloise Boudinot, et al., USDC, ND, Okla.	Condemnation of Indian land	Judgment in amount satisfactory to Department of Interior ($500).	Received Mar. 11, 1964; closed Feb. 3, 1965.
336. U.S. v. Manolis, USDC, Mont.	Action to cancel overlapping lease on Crow Reservation.	Defendant motion to dismiss was sustained	Received Sept. 15, 1964; closed May 23, 1967. Case involved suit for damages (and to quiet title) against holders of void, overlapping leases within the reservation. Decision was made to sue occupants only where they had specifically damaged land or improvements thereon. This was one of several cases testing this kind of action.

Name of case or claim and court in which filed	Subject	Result or status	Remarks
337. Re Manufacturers and Traders Trust Co. No court, N.Y.	Request for action to represent Seneca Indian in a foreclosure action.	Case was disposed of without action because it was determined that the BIA was without jurisdiction over the matter (it was considered a personal matter between the Indian mortgagor and the mortgagee).	Received Dec. 8, 1967; closed Feb. 26, 1968.
338. In the Matter of Lee Howard Marmon, USDC, CD, Cal.	Claim in bankruptcy to recover on loan to business on an Indian reservation.	Brother of debtor satisfied the indebtedness, and matter was closed.	Received Feb. 9, 1968; closed Dec. 23, 1968.
339. Re Marshall Co, Okla. No Court, Okla	(See No. 323 above)	(See No. 323 above)	Received July 25, 1965; closed July 18, 1966.
340. Re Julius Marshall No court, Cal	Action to recover damages for timber trespass on lands belonging to Hoopa Valley Tribe.	Claim of $2,969.28 compromised by collection of $1,846.78.	Received Mar. 2, 1966; closed Mar. 11, 1966.
341. U.S. v. Virginia Martin, et al., USDC; ED, Okla.	Action to quiet title to Choctaw tribal land.	Judgment for plaintiff	Received Jan. 15, 1965; closed Jan. 19, 1966.
342. US v. Virginia Martin, County Assessor of Jefferson Co., et al. USDC. D. Okla.	Action to quiet title to Choctaw tribal land (different tract of land from that in No. 341).	Judgment for plaintiff	Received Jan. 15, 1965; closed Feb. 3, 1966.
343. Martinez v. Southern Ute Tribe, et al. USDC, Colo.	Suit to compel delivery of water to plaintiff through Government canals and ditches.	Judgment for defendants	Received Aug. 21, 1967; closed Dec. 2, 1968.
344. Helen Pratt Martin, et al. v. Howard F. Johnson, Supt. of Osage Indian Agency, et al. USDC. N. Dist., Okla.	Action to set aside decision approving will of an Osage Indian.	Judgment for defendant was affirmed on appeal to the United States Court of Appeals, 10th Circuit.	Received June 7, 1966; closed Sept. 16, 1969.
345. US v. Thomas E. Maupin, et al. USDC. S.D.	Action to recover damages for grazing trespass on tribal land.	Claim of $5,667.30 compromised by collection of $1,811.90.	Received Oct. 2, 1962; closed June 5, 1963.
346. US v. Joseph L. Meek, USDC, Oreg	Action to recover erroneous payment of Nez Perce capital payment.	Claim of $750 compromised by collection of $375	Received Feb. 8, 1967; closed Apr. 17, 1968.
347. In the Matter of the Estate of LeVare Meeks, Fremont Co. Dist. Ct., Wyo.	Claim by Indian for $300,000 due the estate under alleged treaty under which the United States agreed to pay for wrongs done by whites to Indians.	Case was placed in abeyance pending further developments; plaintiff never followed up on his complaint, and matter was eventually closed.	Received July 22, 1968; closed Feb. 13, 1970.
348. Re Jerry Meninick No court, Wash	Request that Government represent Yakima Indian arrested for violation of State fishing laws.	Defendant Indian, Meninick, entered guilty plea before any action by the Government could be taken.	Received May 24, 1966; closed Aug. 19, 1966.
349. Re William Meninick, Klickitat Co. Sup. Ct., Wash.	Request that Government represent Yakima Indian arrested for violation of State fishing laws.	Case dismissed on motion of Klickitat County prosecutor.	Received May 24, 1966; closed Feb. 28, 1967.
350. US v. Lenord Menke, Sup. Ct., Alaska	Proposed action to enjoin defendant from interfering with use of a native trap on public land and to remove defendant from certain restricted Indian lands.	Action was dismissed on Government motion because no formal request for action was forwarded from the Department of Interior (there apparently was some difficulty collecting evidence and information pertaining to this matter).	Received Feb. 14, 1966; closed Aug. 4, 1969.
351. Paul D. Merrill v. Udall, USDC, N.M	Action to establish validity of lease and special use permit issued by BIA.	Matter was settled by issuance of new special use permit and lease in exchange for plaintiff's dismissal of this claim.	Received Oct. 29, 1968; closed Mar. 30, 1970.
352. US v. Fred Mickle, USDC, N. Dist., Okla	Action to recover $1,000 for destruction of house by prospective lessee of an Indian allotment.	Judgment for plaintiff	Received May 13, 1964; closed Apr. 19, 1966.
353. Duncan Miller v. Bureau of Indian Affairs, et al., USDC, E. Dist., Okla.	Action against BIA and its officers to obtain return of deposition and and for damages.	Judgment on pleadings for the defendants was affirmed on appeal to the 10th Circuit.	Received Dec. 26, 1968; closed Nov. 16, 1970.
354. In the Matter of Lyda Miller, USDC, Oregon	Action to set aside determination as to competency made under Klamath Termination Act.	Judgment for plaintiff Miller on basis of entry of consent decree.	Received Aug. 9, 1961; closed June 20, 1962.

355. Re Martha Miller. No Court, Wyo.	Collection of operation and maintenance charges on Indian irrigation project.	Case disposed of by payment of claim in full	Received Jan. 12, 1967; closed Feb. 20, 1962.
356. Suzette Bridges Mills, et al. v. Thor C. Tollefson and John Biggs, Thurston Co., Sup. Ct., Wash.	Request for action to protect United States and Nisqually Indian interests in connection with implementation of pending State fishing regulations.	Request for temporary restraining order against defendants was denied, but no further action was needed because the pending regulations were withdrawn and revised.	Received Dec. 11, 1969; closed Oct. 19, 1970.
357. US v. Jodie R. Myers, USDC, E. Dist., Okla.	Action to collect rent due on allotted lands lease	Determination was made that premises had been vacated but that rent due ($100) was uncollectable.	Received Apr. 13, 1962; closed Jan. 15, 1963. Complaint was dismissed on Government motion.
358. Re Murray Co., Okla. No Court, Okla.	Similar case to No. 323 above	Disposition similar to No. 323 above	Received Apr. 27, 1965; closed July 18, 1967.
359. Motah v. US, USDC, E. Dist., Okla.	Action to set aside results of tribal election and to order a new election.	Judgment for defendant affirmed on appeal to the 10th Circuit.	Received May 3, 1967; closed Mar. 4, 1969.
360. US v. Morrow, USDC, E. Dist., Wash	Request for action to collect delinquent rent under farming lease which had been cancelled.	Judgment for plaintiff and collection of $1,129.84 as satisfaction of judgment.	Received July 22, 1969; closed Sept. 28, 1970
361. Re J. J. Morris, No Court, Okla.	Request for action to evict trespasser from certain allotted lands.	Trespasser vacated premises and paid allottee $350 rental. Request was withdrawn.	Received May 22, 1962; closed Sept. 18 1962
362. Morgan v. Ramsey, Yuma Co., Sup. Ct, Ariz.	Tort action against Indian tribe	Complaint was dismissed as to the Indian tribe	Received July 9, 1965; closed Apr. 14, 1966.
363. US v. Moore Mill and Lumber Co., USDC, Oregon.	Action to recover $125,000 for willful trespass to Indian allotment.	Dismissal of complaint on defendant's motion was affirmed on appeal to the 9th Circuit. Solicitor General decided that no appeal would be taken to the Supreme Court.	Received Oct. 17, 1960; closed Apr. 25, 1963.
364. In the Matter of Mildred Moore, Klamath Co. Cir. Ct., Oregon.	Action to set aside determination as to competency under Klamath Termination Act.	Request for action from Department of Interior was withdrawn after a determination was made that plaintiff Moore had not, in fact, filed a petition regarding the competency determination.	Received Aug. 16, 1961; closed July 9, 1962.
365. US v. Moore, USDC, E. Dist., Okla.	Action to clear title to minerals in restricted allotment.	Judgment for plaintiff	Received May 12, 1967; closed Apr. 22, 1968.
366. State of Montana v. US, et al., USDC Mont.	Condemnation of allotted Indian land	Satsifactory settlement was made without further court action.	Received Jan. 24, 1962; closed Dec. 13, 1962.
367. The Montana Power Co. v. Federal Power Commission, USDC, Mont.	Action to enjoin proceedings by FPC involving the readjustment of rentals on tribal land included in a power project.	Judgment for defendant dismissing the action	Received Apr. 21, 1965; closed Aug. 13, 1965.
368. Modern Homes Constr. Co. v. Wysena and Brown Bucktrot, Creek Co. Dist. Ct., Okla	Foreclosure action on restricted Five Tribes allotment.	Judgment for plaintiffs on note only after confession of judgment as to note only by defendant.	Received May 24, 1968; closed Sept. 20, 1968.
369. Milner v. US, USDC., W. Dist., Wis.	Action for breach of contract to purchase swamp land from Lac Courte Orville Indians.	Judgment for plaintiff. Settlement of plaintiff's claim was subsequently reached.	Received Apr. 24, 1969; closed Jan. 30, 1970.
370. Re Clyde Neilson. No Court, Utah	Request for recovery of delinquent operation and maintenance assessments of $178 in Uintah irrgiation project.	Erroneous billing; there were, in fact, no delinquent charges. Request was canceled.	Received Jan. 20, 1964; closed Jan 11, 1965.
371. Nelson v. Foster, USDC, Oregon	Action to enjoin Indian officials from selling timber on a selective cutting basis.	Summons quashed as to Government officials and summary judgment for non-Government defendants. Plaintiff's appeal to 9th Circuit was dismissed on appellees' motion after plaintiff failed to prosecute appeal.	Received Jan. 24, 1958; closed Oct. 9, 1962.
372. US v. Homer Nelson, USDC, Utah	Action to recover damages in amount of $711 for trespass on Indian lands.	Case settled on eve of trial by agreed payment in exchange for dismissal with prejudice.	Received May 1, 1962; closed Dec. 18, 1963.
373. US v. Marvin Nelson, USDC, S.D	Action to collect tribal grazing taxes of $1,268	Judgment for plaintiff and satisfaction of judgment by collection of total amount due.	Received June 9, 1960; closed May 23, 1965. Payments were made over an extended period.
374. Mildred Nelson v. Edward Marshall, Jr., et al., Humboldt Co. Sup. Ct., Calif.	Action to recover $450 in damages for denail of opportunity to enroll in tribe.	Judgment for defendants (tribal officials)	Received Feb. 1, 1962; closed Feb. 17, 1967.

Name of case or claim and court in which filed	Subject	Result or status	Remarks
375. Re State of N.M. No Court, N.M.	Prospective adjudication of water rights to Rio Taos stream system.	Adjudication was determined to be unnecessary since the proposed project neither benefited nor harmed the Taos Pueblo, because the project was to be located downstream of the Pueblo.	Received June 14, 1968; closed Nov. 15, 1968.
376. N.M. v. US and Pueblo of San Ildefonso, USDC, N.M.	Condemnation of tribal lands for highway right-of-way.	Judgment in amount satisfactory to Department of Interior ($19,500).	Received Aug. 25, 1967; closed Oct. 15, 1969.
377. N.M. v. US and Pueblo of Iseleta, USDC, N.M.	do	Judgment in amount satisfactory to Department of Interior ($170,000).	Received July 24, 1970; closed Nov. 20, 1970.
378. N.M. v. Russell, USDC, N.M.	Action to declare as ultra vires action by Interior Department in creating town of Cochiti Pueblo.	Stipulation of dismissal	Received Dec. 17, 1970; closed June 22, 1971.
379. Re State of N.Y. No Court, New York	Request by Oneida Indians to prosecute possible claim for land taken wrongfully during period from 1788 to 1842 by the State of New York.	There were no grounds for complying with the request. Federal action had been precluded for various reasons.	Received June 5, 1968; closed Dec. 24, 1968.
330. Re Shirley Newport. No Court, Okla.	Request for action to evict Osage lessee and to collect delinquent rent.	Lessee vacated premises; field solicitor collected delinquent rent. Case was closed.	Received July 10, 1970; closed Oct. 7, 1970.
381. Re Alice Shale Newton. No Court, Wash.	Request to enjoin Indian allottee from taking timber without approval of Interior.	Request for action was withdrawn.	Received July 28, 1967; closed Oct. 16, 1967.
382. US v. Nez Perce Cement Corp., USDC, Idaho.	Action to recover $32,400 royalties and liquidated damage due under cancelled mineral lease.	Summary judgment in amount of $41,200. Case was held in abeyance for 4 years pending collection of judgment. Nez Perce was determined to be a shell corporation with no attachable assets, and no individuals could be made liable.	Received Aug. 28, 1962; closed Apr. 9, 1970.
383. Re James A. Nichols. No Court, Okla.	Request to recover $150.00 for use and occupancy of Indian land.	Request for action was withdrawn. Nichols paid the amount due and renegotiated for a 5-year lease.	Received July 1, 1963; closed Jan. 29, 1964.
384. Re Gilbert Nolan. No Court, Cal.	Request for action on behalf of Indians to enjoin damage to a boundary fence.	A determination was made that there was no basis for action by Government as matters then stood. Intervention by Government was deemed untimely.	Received May 14, 1968; closed July 23, 1969.
385. Nancy W. Nolin, ancillary executrix of the Estate of Edward P. Nolin, Jr., deceased v. Jicarilla Apache Tribe, Inc., et al., USDC, N.M.	Tort action against Indian tribe in which Interior requested United States to appear for purpose of contending the Indian tribe is a nonsuable entity.	Case dismissed as to Indian tribe	Received Dec. 31, 1963; closed June 4, 1964. Mrs. Nolin's claim arose out of a hunting accident on tribal lands in which her husband was allegedly accidentally killed by 2 members of the tribe.
386. In the Matter of Pauline Norwest, USDC, Oregon.	Action to set aside determination as to competency under Klamath Termination Act.	Judgment for plaintiff (stipulation and consent decree).	Received July 24, 1961; closed Jan. 26, 1962.
387. Horce Noyobad, Lee Motah, et al., individually and as members of either the Kiowa, Comanche, or Apache tribes of Okla. v. Will J. Pitner, Area Director, BIA, et al., USDC, W. Dist., Okla.	Action to enjoin area director and tribal business committee from holding election.	Case dismissed on grounds of mootness.	Received July 5, 1962; closed Sept. 12, 1962.
388. Re Rosa Nuzum. No Court, Neb.	Request to set aside a tax sale of accretion land to a restricted Indian allotment.	Richardson County, Nebr., removed land from tax rolls and canceled assessments without court action.	Received Jan. 10, 1962; closed Sept. 9, 1963.
389. Town of Okemah v. US and Freeland Unussee, et al., USDC, E. Dist., Okla.	Condemnation of Indian allotment	Case disposed of by judgment in amount satisfactory to all parties ($200).	Received Mar. 12, 1963; closed July 11, 1963. This was 1 of 8 condemnation cases involving the town of Okemah in 1963. All the cases were settled by satisfactory judgments or negotiated purchases.

390. Okla. Gas & Electric Co. v. US, et al., USDC, W. Dist., Okla.	Condemnation of restricted Indian land	Judgment in amount satisfactory to all parties ($511.48).	Received Aug. 29, 1961; closed Aug. 7, 1972. This was one of 73 condemnation cases involving Oklahoma Gas and Electric Co. during the period from 1960 to 1971. All cases were settled by entry of satisfactory judgments or purchase at a negotiated price.
391. State of Okla., ex rel. Dept. of Highways v. Nancy Perkaquanard (Tookahpowapty), et al., USDC, WD, Okla.	Condemnation of Indian allotment	Judgment in amount satisfactory to all parties ($3,100).	Received June 30, 1961; closed Mar. 18, 1963. This was 1 of 63 condemnation cases involving the State of Oklahoma, its Department of Highways or its Turnpike Authority during the period from 1960 to 1971. All cases were settled be entry of satisfactory judgments or by purchase at a negotiated price.
392. In the Matter of Aramis Jackson, USDC, Ore.	Action to set aside determination as to competency made under Klamath Termination Act.	U.S. Attorney reported that commissioners' counsel determined subsequent to filing of complaint that proceedings should be dismissed and the Indians should remain under trust. Subsequent to such determination in conference with Indians case was dismissed.	Received Aug. 9, 1961; closed Aug. 31, 1962.
393. In the Matter of Charlotte Jackson, USDC, Ore.	Same as No. 392	Same as No. 392	Same as No. 392.
394. In the Matter of Elliot B. Jackson, St. Ct. Wash.	Request to represent Indians arrested for fishing violations.	State prosecuting attorney dismissed case	Received Oct. 14, 1966; closed Feb. 28, 1967.
395. In the Matter of Jessie Jackson, USDC, Ore.	Same as No. 392	Same as No. 392	Same as No. 392.
396. In the Matter of Yvonne Jackson, USDC, Ore.	do	do	Received Aug. 16, 1961; closed Mar. 8, 1962.
397. Cora, Barbara Lee, Beulah and Hoover James v. Joseph E. Segran & Sons, Inc., St. Ct. Okla.	Action by Indian heirs of Five Civilized Tribes to set aside oil and gas leases. United States requested to represent Indians involved.	Parties settled the matter out of court, and United States did not get involved.	Received Oct. 15, 1963; closed Nov. 27, 1963.
398. Don and Winona James v. Mabel George Gomex, et al., ED, Cal.	Action to enjoin area director of BIA from paying our proceeds of sale of Indian lands.	Action dismissed upon order granting motion for summary judgment filed on behalf of Federal default.	Received Dec. 8, 1966; closed Sept. 21, 1970.
399. In the Matter of Ernest and Dennis James, St. Ct., Wash.	Request for United States to represent Yakima Indians arrested for fishing in violation of State law.	Criminal charges against Indians were dismissed by trial court and the Superior Court of Washington affirmed that judgment on appeal filed by the State of Washington.	Received May 24, 1966; closed Aug. 20, 1968. United States did participate in defense of Indians.
400. US v. Robert L. James, ED, Okla	Action to recover $300 for the sue and occupancy of an Indian allotment by trespasser.	Full amount of claim paid and action dismissed	Received Sept. 28, 1961; closed Apr. 10, 1963.
401. Scotty James v. US, USDC, Alaska	Action to recover $2,700 for taking of land by Navy in 1939. Action filed pursuant to special act of Congress.	Consent judgment entered in favor of plaintiff to satisfaction of all parties. Amount of judgment $2,500.	Received July 8, 1960; closed July 6, 1962.
402. Jerauld Jandreau v. US, USDC, S.D	Action filed by Indians for just compensation for lands taken for Fort Randall Dam and Reservoir.	Case disposed of by compromise to satisfaction of all parties. Compensation granted to Indians, $9,250.	Received Apr. 4, 1969; closed Sept. 29, 1970.
403. US. v. Lottie Mae Flick, et al., ED, Okla	Action to cancel tax sale of restricted purchase land	Case disposed of by judgment on behalf of United States.	Received Apr. 10, 1967; closed Jan. 4, 1968.
404. Gwendolyn Flada Javine v. Dodge, ND, Okla.	Action against Superintendent of Indian Agency to require payment of funds allegedly due under Osage head right.	Case disposed of by order granting Government motion for summary judgment.	Received Aug. 3, 1963; closed Oct. 19, 1964.
405. In re Jefferson Co., ED, Okla	Proposed action to quiet title to Choctaw-Chickasaw lands and for damages resulting to the same by reason of unlawful use and occupancy.	No action filed by United States as dispute was handled by attorney for tribes.	Received Apr. 9, 1965; closed July 18, 1967.

Name of case or claim and court in which filed	Subject	Result or status	Remarks
406. US v. Harold Jenkins, ED, Wash.	Action for claim for failure to pay operating and maintenance charges required by farm lease on Indian lands.	Claim paid in full and case disposed of upon stipulation upon dismissal.	Received Mar. 26, 1969; closed Jan. 15, 1970.
407. In re Chris Jensen, Wyo.	Collection of operation and maintenance charges on Indian irrigation project.	No action filed. Claim paid in full upon negotiation by U.S. Attorney.	Received Jan. 12, 1967; closed June 6, 1967.
408. In re Don Jensen, Wyo.	Same as case No. 407.	Same as case No. 407.	Received Jan. 12, 1967; closed Nov. 28, 1967.
409. US v. Roger Jessup & Marguerite Rice Jessup, ND, Cal.	Action to quiet title to lakebed of Goose Lake, Calif.	Title quieted to subject property.	Received May 2, 1956; closed Oct. 9, 1962. Action successfully protected 565 acres of land.
410. In re Aleck Johnson, Kans.	Request for permission to sue United States for taking land of Cherokee Freedmen.	Reply letter to Aleck Johnson advised that neither the Department of Justice nor Attorney General is authorized to give permission to sue the United States. Case closed.	Received Dec. 16, 1963; closed Apr. 1, 1964.
411. In re Charles Ronald Johnson, et al., USDC, Oreg.	Possible claim for damages to Indian land caused by forest fire.	Initial complaint received from U.S. Attorney and forwarded by Justice to Internal with request for complete factual report and recommendation. No action filed, in absence of request for further action from Interior.	Received Nov. 7, 1962; closed Mar. 5, 1964. U.S. Attorney first advised that extensive fire burned timberland in individual allotments and that Johnson, et al., were possibly liable for dam, to restricted lands. After case was initiated by Justice, Interior did not recommend further action and no such action was taken.
412. U.S. v. Mrs. Edith Johnson, Anthony Curley Johnson, et al., USDC, S.D.	Action to enjoin grazing trespass on Indian land and to collect $1,200 in damages.	Order of court granted permanent injunction against trespass and awarded damages in the amount of $1,200.	Received Jan. 26, 1965; closed Oct 3, 1966.
413. U.S. v. Lloyd K. Johnson, USDC, Minn.	Action to quiet title to restricted Indian allotment.	Case disposed of by judgment for the United States, quieting title to subject land.	Received Feb. 21, 1967; closed July 7, 1969.
414. In re Marvin Johnson, Mont.	Request for collection of operation and maintenance charge on Blackfeet irrigation project.	Case disposed of by payment of claim in full upon demand for payment by U.S. attorney.	Received Sept. 14, 1965; closed May 18, 1966.
415. In re Sam Johnson, Minn.	Complaint of timber trespass on tribal land of Leech Lake Indian Reservation.	No action filed since amount involved was extremely small. No response ever received from debtor to U.S. Attorney demand for $30 payment.	Received Mar. 29, 1965; closed July 8, 1965.
416. In re Johnston Co., Okla., ED, Okla.	Proposed action to quiet title to Choctaw-Chickasaw lands and for damages resulting to such lands by reason of unlawful use and occupancy.	No action ever filed as cemetery tracts were never used for cemetery purposes and alleged trespass was minimal. Case returned to Interior with no action filed to satisfaction of all parties.	Received Apr. 9, 1965; closed July 18, 1967.
417. In re Dan Jones and Jim Jones, WD, Wash.	Request for representation of 2 Skagit Indians jailed for fishing contrary to Washington State law and who claimed to be protected by treaty rights.	Report of Department of Interior indicated after thorough investigation that the Indians involved were fishing at a spot outside of any protected area and Interior did not concur in request for representation. United States did not represent Indians in dispute.	Received Jan. 3, 1963; closed Apr. 5, 1963.
418. Levi W. Jones v. Phileo Nash and Stewart L. Udall, WD, Okla.	Action to obtain payment of $192 by persons claiming to be members of Sac and Fox Indian Tribe.	Case dismissed upon Government motion for summary judgment.	Received Nov. 15, 1963; closed Jan. 6, 1965.
419. Albert Joseph v. US, et al., USDC, S.D.	Action to determine plaintiff rights under a lease as to Indian land which had expired.	Case disposed of on Government motion to dismiss.	Received Sept. 10, 1970; closed Nov. 12, 197
420. Florence Joshua v. Lewis Goodhouse, et al., USDC, N.D.	Action to restrain tribal officials from enforcing tribal constitution and from allegedly depriving Indians within the reservation of civil rights.	United States appeared on behalf of tribal judge. Case dismissed on motion of defendant.	Received Aug. 5, 1969; closed Feb. 18, 1971.

421. In re Leon Judd, ND, Okla.	Request to eject trespasser from Indian allotment.	No case filed, as trespasser had vacated property and his whereabouts were unknown.	Received Apr. 28, 1965; closed Oct. 11, 1965.
422. Ruth M. Kadayso v. Stewart L. Udall, WD, Okla.	Action to set aside an order disapproving Indian will and determining heirs.	Court granted motion for summary judgment filed on behalf of Federal defendant.	Received July 27, 1966; closed May 15, 1967.
423. Kenneth M. Kale v. Robert L. Bennett, CD, Cal.	Action by Chickasaw Indian against Commissioner of Indian Affairs to establish right to public domain Indian allotment. Action based on 25 U.S.C., secs. 175, 345, 346, and Civil Rights Act of 1968.	Case disposed of on motion to dismiss of defendant.	Received Oct. 14, 1968; closed Apr. 3, 1969. Indian's application for land had been rejected after complete consideration by BLM.
424. Kamo Electric Cooperative, Inc. v. Fife, et al., ND, Okla.	Condemnation of right-of-way across Indian allotments.	Case closed after award made to satisfaction of all parties.	Received Dec. 21, 1962; closed Nov. 5, 1963.
425. Kamo Electric Cooperative, Inc. v. Bass, et al., WD, Okla.	Same as No. 424	Same as No. 424	Received Sept. 23, 1963; closed Mar. 10, 1964.
426. Kamo Electric Cooperative, Inc. v. Jackson, et al., ND Okla.	do	Case disposed of by judgment for defense awarding $7,700.	Received Apr. 23, 1964; closed Nov. 20, 1964.
427. Kamo Electric Cooperative, Inc. v. Clarence Deer Wesley, ND, Okla.	Condemnation of allotted land	Satisfactory award made for Indian lands taken in condemnation.	Received Nov. 4, 1966; closed Feb. 9, 1967.
428. Kamo Electric Cooperative, Inc. v. Morgan, et al., ED, Okla.	Same as Case No. 427	Same as case No. 427	Received Dec. 7, 1966; closed Apr. 21, 1967.
429. In re Matthew J. Kane, et al., Okla	Request to put Osage oil and gas lessee in possession of an area for a pipeline.	No action taken, in absence of request for action from Department of Interior.	Received Mar. 29, 1967; closed Aug. 14, 1967.
430. US v. Alfred and Robert Kary, et al., USDC, S.D.	Action to set aside unimproved conveyances of restricted Indian land. The action was filed to quiet the title of the Indian owners of property who had sold it by unapproved deed for $1,000.	The defendant offered to pay $6,400 additional compensation for the lands, which offer was accepted by all parties. Upon stipulation, the action was dismissed.	Received Aug. 30, 1966; closed Oct. 7, 1968.
431. US v. Douglas Keal, WD, La	Action to evict trespasser from Indian land	Trespasser voluntarily vacated land. No action necessary so judgment entered for plaintiff.	Received Sept. 9, 1964; closed Feb. 2, 1965.
432. City of Ketchikan v. George Johnson, et al., USDC, Alaska.	Action to condemn Indian land	Case disposed of by judgment for plaintiff but full claim of $500 collected on behalf of the Indian owners.	Received Dec. 28, 1966; closed June 2, 1970.
433. In re John D. Kirby, Jr., Okla	Action to remove trespasser from Indian allotment and collect $250 damages.	No action filed as rental was uncollectible and trespasser had vacated premises.	Received Nov. 6, 1962; closed Feb. 8, 1963.
434. In re Kickapoo Indians, Kansas	Request by tribal officials for aid in obtaining tribal records from former officers.	Case referred to Department of Interior for recommendations. No action filed as no request for action was received from Interior.	Received Nov. 20, 1967; closed Apr. 29, 1968.
435. Carl and Lulu King, et al., v. Flora and Austin Cruz and US, CD, Cal.	Action by Agua Caliente Indians to set aside long-term lease on their allotment.	Defendant motion to dismiss granted and case dismissed.	Received July 18, 1968; closed Feb. 14, 1969.
436. Daisy Kiser v. Hoopa Tribe, et al., ND, Cal.	Action to recover $50,000 for personal injuries occurring on tribal land, naming tribe and United States as defendant.	Case settled out of court for $1,800 and disposed of by dismissal.	Recieved Sept. 17, 1965; closed Mar. 24, 1970.
437. Klamath and Modoc Tribes, et al. v. H. O. Maizon and US (intervenor), USDC, Ore.	Action to determine right of Indians to hunt and fish on former Klamath Indian Reservation.	Case disposed of by judgment for defendant at trial level. United States intervened in USDC but appeared in court of appeals as amicus curiae. 9th Circuit affirmed judgment of trial court.	Received Jan. 28, 1963; closed June 17, 1965.
438. US v. George Knight, et al., USDC, Utah	Action to enjoin interference with cleaning ditch of Goshute Indian Reservation.	Case disposed of by judgment for defendant, case was contested and Government lost. Solicitor General recommended no appeal and no appeal was taken.	Received July 18, 1961; closed Oct. 28, 1963.
439. In re Stanley Koss, USDC, Mont	Request for removal of trespass from Indian tribal land and to determine tribal title to shore of Flathead Lake and fill plan.	No action filed as trespass had abated and it was not felt that the factual situation was proper for litigation of other issues.	Received July 14, 1964; closed June 19, 1969.

Name of case or claim and court in which filed	Subject	Result or status	Remarks
440. Kaw Valley Oil Co., Inc. v. Sec. of Int., et al., USDC, ND, Okla.	Action to reform Osage oil lease to provide shut-in well payments.	Case dismissed on jurisdictional grounds	Received Mar. 6, 1969; closed Sept. 30, 1969.
441. Eugenia Paiz v. William Hughes, Rio Arriba Co., Dist. Ct., N.M., app. to N.M. Sup. Ct.	Request to file amicus brief in action involving auto accident on Indian reservation.	New Mexico Superior Court decision was in accord with U.S. position in amicus brief.	Received Feb. 17, 1965; closed Dec. 2, 1966.
442. In re Palm Springs Builders Supply Co. No Court. Calif.	Request for action to recover $4,840 for illegal occupancy of part of an Indian allotment.	Determination was made that proposed defendant company had been dissolved and proposed individual defendant was deceased and his estate had not been probated. Case was closed without action.	Received May 24, 1962; closed Mar. 12, 1964.
443. City of Palm Springs, Calif. v. Pierce, USDC SD, Calif.	Condemnation of allotted Indian land	Judgment in amount satisfactory to all parties ($615,000).	Received Mar. 13, 1962; closed Aug. 6, 1965. This case involved considerable work regarding appraisals and valuation.
444. Agua Caliente Band of Mission Indians v. City of Palm Springs, et al., USDC, SD, Calif.	Action to enjoin application of city zoning ordinances to tribal and trust lands.	Stipulation of dismissal after proposed zoning ordinance was revised to exclude from jurisdiction the subject lands.	Received Oct. 6 1965; closed June 22, 1967.
445. US v. Palm Springs Paint Co., et al., USDC, SD, Calif.	Action to set aside unauthorized agreement for lease of restricted allotted land.	Judgment for plaintiff	Received Mar. 17, 1961; closed Dec. 4, 1967.
446. Palm Springs Unified School Dist. of Riverside County v. 10 acres of land, et al., USDC, SD, Calif.	Condemnation of allotted Indian land	Judgment in amount satisfactory to Department ment of Interior ($57,500).	Received May 22, 1962; closed Oct. 29, 1963. This was 1 of 3 condemnation cases involving the Palm Springs Unified School District in 1962. The other 2 also were disposed of by satisfactory judgments of $103,000 and $30,000, respectively.
447. Billie Palmer, et al., v. Paul L. Fickinger, et al. USDC, ED, Okla.	Action by dissident members of Seminole Tribe to enjoin expenditure of tribal funds on new enterprise.	Case dismissed on Government motion	Received Oct. 10, 1961; closed May 28, 1962.
448. Billie Palmer, et al., v. John Brown, et al., USDC, ED, Okla.	Action by Seminole tribal members for an accounting by area director and by tribal officials.	do	Received Feb. 25, 1964; closed Apr. 3, 1964.
449. Pan American Petroleum Corp. v. Sec. of the Interior.	Action to require reimbursement for alleged overpayment of compensatory royalty under Indian oil and gas lease.	Summary judgment for defendant	Received Apr. 6, 1960; closed Apr. 26, 1965. Case originally was remanded by court to Department of Interior for further administrative proceedings and then went back to district court for further litigation.
450. Papago Farms, James Stewart Co., et al., v. Thomas H. St. Clair, Supt., Papago Indian Agency, et al.	Action to enjoin cancellation of an agricultural development lease of tribal land and to recover damages.	Stipulation and order of dissmissal entered after negotiated settlement concluded.	Received May 27, 1963; closed May 25, 1967.
451. Papago Tribe of Arizona v. Papago Farms, et al., Pima County Superior Court, Ariz.	Action by tribe to recover damages for breach of land development contract.	Motion by tribe to dismiss the action granted in conjunction with settlement in No. 450.	Received Dec. 13, 1963; closed Mar. 8, 1967.
452. In re Frank W. Parker. No. Court. Idaho	Action to recover $40,600 balance due on tribal loan.	Claim comprised by collection of $3,499.44 and transfer of real estate valued at approximately $30,000.	Received Mar. 15, 1965; closed Dec. 18, 1967.
453. In the matter of the Conservatorship of the Estate of Frances Patencio. USDC, CD, Calif.	Guardianship and conservatorship proceedings involving Agua Caliente Indians.	Government interest was limited to subpoena served upon BIA official. Case was closed in so far as Government was concerned when the official was released from the subpoena.	Received May 16, 1968; closed Jan. 7, 1969. Similiar disposition occurred in the case of Ray Leonard Patencio and of John J. Patencio.
454. US v. William Howard Payne, USDC, WD, Okla.	Proposed action to recover attorney fees paid to tribal counsel acting without approved contract.	Judgment for defendant	Received May 4, 1964; closed Oct. 5, 1970.

455. Louise A. Pease v. Udall. USDC, District of Columbia.	Action by applicant for lease under Mineral Leasing Act to enjoin competitive sale of oil and gas leases and to have property leased under Act.	do	Received Mar. 25, 1963; closed Aug. 10, 1964.
456. US v. Pennington County, So. Dak, USDC, SD.	Action to remove certain tax liens from trust land	Judgment for plaintiff	Received Dec 6, 1967; closed May 10, 1968.
457. In re Earl Penn, et al. No Court. Wash	Request for assistance in return of Indians' fishing nets seized by State game wardens.	Satisfactory resolution of the dispute was concluded without court action.	Received Mar. 21, 1967; closed Oct. 1, 1968.
458. Perdue v. US, Sec. of Interior, et al. USDC, Oreg.	Action to compel Secretary to issue plaintiff a certificate of entitlement for a public domain allotment.	Dismissal of claim without prejudice	Received Aug. 31, 1966; closed Feb. 23, 1967.
459. Ainslie Perrault v. The Creek Indian Nation, et al.	Suit to impose constructive trust on royalties collected by Creek Nation for sand removed from plaintiff's land.	Case dismissed on Government motion	Received Aug. 13, 1968; closed Aug. 26, 1968.
460. In the Matter of the Estate and Guardianship of Michael Dennis Pete. USDC, CD, Calif.	Guardianship and conservatorship procceedings involving Agua Caliente Indians.	Case dismissed with prejudice on Government motion.	Received May 16, 1968; closed Jan. 8, 1969.
461. US v. Peterson, USDC, SD	Action for injunction against grazing trespass on Indian land.	Injunction granted and damages of $2,500 awarded	Received Jan. 16, 1964; closed Mar. 16, 1965.
462. Re Petrel Oil Corp. No Court. South Dakota.	Request for action to collect delinquent rent on several oil and gas leases.	Claim returned to agency (B.I.A.) as uncollectable on the basis of investigation.	Received Jan. 15, 1971; closed Feb. 18, 1971.
463. Pikyavit v. Uintah Ute Indians of Utah, et al. USDC, Utah.	Action to establish that (1) Kanosh band of Indians are entitled to share in Indian Claims Commission judgment in favor of Uintah Ute Indians (2) to have Uintahs declared constructive trustees and (3) to obtain $2,000,000 payment from judgment of commission.	Judgment for defendants	Received May 3, 1963; closed May 22, 1964.
464. Pinto v. Largo. USDC, SD ,Cal	Action under 25 United States Code Section 345, to determine persons entitled to interest in trust patent land.	Summary judgment for defendant (represented by United States).	Received Nov. 22, 1961; closed Nov. 26, 1967.
465. Re William H. Pipestem	Request for action concerning possible misappropriation of funds by guardian of Osage Indian.	Determination was made that there was no basis for Government maintenance of a cause of action.	Received Apr. 25, 1967; closed Oct. 24, 1967.
466. U.S. v. Assessor of Pittsburg County, Oka. USDC, ED, Okla.	Action to quiet title to Choctaw-Chickasaw tribal lands.	Judgment for plaintiff	Received Dec. 31, 1964; closed May 9, 1966. Quiet title actions against Pittsburg County involving other tracts were returned to Department of Interior for further administrative action (treatment similar to that in No. 323 above).
467. Poafpybitty v. Skelly Oil Co., Okla. County Dist. Ct., Okla.	Request by U.S. Attorney for instructions regarding action for damages for wasted gas taken from Indian allotment.	No request for action from Department of Interior was filed. Determination was made by Interior not to intervene on behalf of Indians, who were privately represented.	Received Mar. 14, 1962; closed May 24, 1967.
468. Re Seldon H. Polk. No Court. California	Request for action to enjoin interference with irrigation ditch serving Yuma Indian Reservation allotment.	Case settled by compromise after negotiations	Received Sept. 24, 1963; closed Dec. 31, 1963.
469. Pontotoc County Soil & Water Conservation Dist. v. US, et al., USDC, ED, Okla.	Condemnation of Indian land	Due to disagreement as to the value of land, dismissal was moved for by defendant. Case was dismissed, and plaintiff took no further action.	Received Sept. 6, 1966; closed Sept. 5, 1967.
470. US v. Jim Post. USDC, ED, Okla	Action for agricultural trespass on tribal lands	Judgment for plaintiff and collection of $240 damages.	Received Sept. 3, 1963; closed Aug. 17, 1964.
471. Power Authority of the State of New York v. 1,383.55 acres of land. USDC, WD, New York.	Condemnation of Tuscarora tribal land	Case settled by compromise and payment to Tuscarora Nation of $844,513.	Received Dec. 12, 1957; closed Aug. 5, 1963.

Name of case or claim and court in which filed	Subject	Result or status	Remarks
472. In the Matter of the Estate of Benny Powyowit. Jefferson County Court, Oregon.	Action to enjoin Bureau of Indian Affairs from selling property in the estate of deceased Indian.	Complaint voluntarily withdrawn	Received May 24, 1968; closed Jan. 15, 1970.
473. Prarie Band of Pottawatomie Tribe of Indians, et al. v. Mage N. Puckkee, et al. USDC, Kansas.	Action to determine the valid governing body of an Indian tribe and those members who may share in per capita payments.	Dismissal based upon lack of jurisdiction was affirmed* on appeal to U.S. Court of Appeals, 10th Circuit.	Received Sept. 8, 1961; closed Jan. 31, 1968.
474. Prarie Band of Pottawatomie Tribe of Indians, et al. v. Udall. USDC, Kansas.	Action to obtain determination as to which Indians are entitled to a share in Indian Claims Commission judgment.	Summary judgment for defendant affirmed on appeal to U.S. Court of Appeals, 10th Circuit. Certiorari denied by Supreme Court.	Received Oct. 9, 1963; closed Oct. 31, 1965.
475. Re Albert Prescott. No Court. Minnesota	Request for action to recover $198 for timber trespass.	Approximately $130 was collected by U.S. Attorney. Balance was determined to be uncollectable. Case was closed.	Received June 21, 1965; closed Feb. 21, 1967.
476. John W. Preston, Jr., personally and as executor of the Estate of John W. Preston, deceased; Oliver Clark and David D. Sallee v. United States and Eugene Segundo. USDC, SD, Cal.	Action against Palm Springs Indian (Agua Caliente) to recover attorney fees due as a result of awarding of equalization allotments on reservation.	Trial court's denial of U.S. motion to dismiss for lack of jurisdiction was certified to U.S. Court of Appeals, 9th Circuit. On this appeal, the 9th Circuit reversed trial court's ruling on motion to dismiss.	Received Jan. 21, 1964; closed June 9, 1966. This was 1 of 71 cases involving issue of attorney fees arising out of allotment program.
477. Re Prestridge Lumber Co. No Court. New Mexico.	Action to recover $39,777 for breach of timber sales contract between lumber company and Mescalero Apache Tribe.	Investigation disclosed lumber company was defunct and that further collection efforts were futile.	Received Mar. 22, 1966; closed Dec. 19, 1967.
478. U.S. v. Ulysses Printup. USDC, WD, NY	Action to collect on loan from Indian tribe	Judgment for plaintiff and collection of $325.52 as satisfaction of judgment.	Received Feb. 9, 1956; closed Feb. 27, 1963.
479. U.S. v. James Pritchett. USDC, ED, Okla	Action to recover $420 rental due under Indian lease.	Default judgment entered on behalf of plaintiff. Nothing was collected, and determination was made that case did not warrant placing in abeyance pending collection on judgment.	Received Mar. 31, 1961; closed Mar. 23, 1962.
480. Quinault Indian Tribe, et al. v. State of Wash. U.S. as plaintiff-intervenor v. State of Wash. USDC, WD, Wash.	Action to determine validity of application of State law concerning transportation and sale of fish taken pursuant to treaty right.	Judgment for plaintiff	Received Mar. 29, 1962; closed Mar. 16, 1965. At issue was application of a certain State statute that prevented Indians from hiring shippers to handle commercial marketing of steelhead catch in interstate shipments.
481., US v. Scott Quinton. USDC, ED, Okla	Action to evict former tenant on Indian land	Case dismissed on plaintiff's motion. Defendant had vacated and was without assets for execution even if money judgement was obtained.	Received June 15, 1964; closed July 28, 1965.
482. US v. Leonard W. Ragan. USDC, ED, Wash	Action for grazing trespass on Indian land	Case dismissed on plaintiff's motion after defendant agreed to certain negotiated conditions.	Received June 24, 1964; closed Mar. 4, 1965.
483. US v. Ruby Rainwater. Tract #753, Haskell County, Okla. USDC. ED, Okla.	Action to quiet title to land in the Choctaw-Chickasaw Tribes. This and other similar cases were in conjunction with the termination program and were handled under special procedures. They are noted throughout this summary.	Case disposed of by judgment for plaintiff	Received Apr. 3, 1968; closed Dec. 2, 1968.
484. Re Frank I. Raley. No Court. Oklahoma	Request for an accounting from guardian of Osage Indian.	Case closed since it was determined to be impossible to proceed against prospective defendant.	Received Sept. 27, 1966; closed Jan. 15, 1969. No evidence sufficient upon which to base a cause of action.
485. US v. Rayonier, Inc. USDC, WD, Wash	Action to recover $120,086 alleged underpayment on timber contract because Interior Department allowed the purchaser interest on the advance payments required under the contract.	Stipulation of settlement entered November 1969	Received July 18, 1963; closed Dec. 28, 1969. Payment of $40,000 was received as payment of claim in full.

486. Marcella Grace Redthunder, et al. v. United States, et al. USDC, Oregon.	Action for damages resulting from refusal to put plaintiff on tribal roll.	Order of dismissal entered on Government motion.	Received Nov. 16, 1967; closed Sept. 5, 1968.
487. Grover Reed v. National Bank of Portland. USDC, Oregon.	Suit to declare Indian trust agreement void because based upon alleged unconstitutional act of Congress.	Summary judgment for defendant. Case was another test of Klamath Termination Act.	Received Aug. 9, 1961; closed May 24, 1963.
488. Re Milton F. Reeves. No Court. New Mexico.	Action to recover $300 for rent due on Indian lease.	Lease was canceled. Case was disposed of without litigation.	Received Sept. 22, 1967; closed Jan. 24, 1968.
489. US v. Joe Renfrow, et al. USDC, ED, Okla.	Action to eject former lessee and to recover $200 rent.	Case dismissed after payment of claim in full	Received June 3, 1966; closed July 12, 1966.
490. US v. Willard & Mildred Rhoades. USDC, ED, Cal.	Action to enjoin rancheria Indian from interference with construction of authorized transmission line on rancheria land.	Dismissal entered after transmission line was in place and defendant had not interfered with same.	Received May 28, 1968; closed May 5, 1970.
491. Richards v. Edwin J. Lippmann, et al. Muskogee County Dist. Ct., Okla.	Reformation of deed to restricted Indian	Order of dismissal entered as to United States; litigation then continued.	Received Nov. 29, 1967; closed Feb. 15, 1968.
492. US v. Kenneth Richardson. USDC, Alaska	Action to recover $400 rental on tribal lease	Entry of default judgment for plaintiff	Received Feb. 1, 1966; closed June 27, 1968. $125 collected on judgment.
493. In the matter of the Application of Oklahoma Natural Gas Co. Corporation Commission of the State of Okla.	Application for permit for underground storage of gas (one of the tracts involved was owned by a restricted Creek Indian).	Case closed because no governmental rights were adversely affected.	Received Feb. 18, 1966; closed June 16, 1966.
494. Same pl. and commission as 493	See No. 493 above	See No. 493 above	Received Aug. 4, 1967; closed Oct. 3, 1967.
495. Public Service Co. of Oklahoma v. US and Cornelius James, et al. USDC, ED, Okla.	Action to condemn allotted land	Case disposed of by satisfactory award ($400) in condemnation.	Received Dec. 5, 1961; closed Mar. 29, 1962. This was 1 of 18 condemnation actions involving the Public Service Co. of Oklahoma between 1961 and 1970. All the cases were settled either by judgments satisfactory to all parties or by purchase based upon a negotiated price.
496. Simon Old Crow v. Paul Bradley. No Court. Montana.	Action to cancel overlapping leases of Crow Tribal lands.	Case closed because request for action was withdrawn.	Received Oct. 13, 1964; closed June 25, 1965.
497. Betty Jo Oliphant v. Hall H. McClain, et al. USDC, SD, Cal.	Action to obtain patent for public land Indian allotment.	Case dismissed on Government motion	Received Feb. 23, 1965; closed Aug. 13, 1965.
498. James and Della Oliver v. Fred A. Seaton. USDC, District of Columbia.	Action to set aside Interior Department approval of a tribal ordinance forbidding use of peyote.	Summary judgment for defendant affirmed on appeal to the U.S. Court of Appeals for the District of Columbia. Plaintiffs' petition for certiorari was denied.	Received July 20, 1960; closed Feb. 18, 1963.
499. Omaha Public Power Dist. v. Walker. USDC, Nebr.	Condemnation of Indian land	Judgment in amount satisfactory to Department of Interior ($18,341).	Received July 26, 1968; closed Jan. 15, 1969.
500. Charles and Leo O'Neal v. Hickel. USDC, SD.	Action against tribal and Federal officials to enjoin foreclosure on rehabilitation loan and for damages.	Case dismissed after plaintiff failed to press their claim (apparently plaintiffs dropped the matter after new tribal officers were elected).	Received Apr. 8, 1970; closed June 14, 1971.
501. Oregon v. Gowdy. Supreme Court of Oregon.	A State court conviction of a Yakima Indian for off-reservation fishing violation was appealed to the Oregon Supreme Court.	Prior to U.S. Department of Justice participation in case, Supreme Court of Oregon dismissed the appeal on its own motion.	Received July 11, 1963; closed Apr. 30, 1964.
502. US v. Oregon and Wash. USDC, Oregon	Action to determine treaty fishing rights of Yakima Indians and others without regulation by States.	Judgment for plaintiff (including intervening tribes).	Received July 31, 1968; closed Jan. 5, 1970.
503. Oregon v. US, et al. USDC, Oregon	Condemnation of Indian land	Judgment in amount satisfactory to Department of Interior ($5,250).	Received Sept. 22, 1967; closed Sept. 17, 1968. This was 1 of 4 related cases involving the State of Oregon between 1968 and 1970. All were settled by judgments satisfactory to all parties.
Trustees for Owens Valley Paiute-Shoshone Indians v. George Brown. Inyo County Superior Court, Cal.	Action by tribal trustees to evict a member	Case disposed of since United States was not directly affected (determined to be intra-tribal dispute).	Received June 7, 1962; closed July 31, 1962.

Name of case or claim and court in which filed	Subject	Result or status	Remarks
505. U.S. v. T. J. Rickels, USDC, South Dakota	Action for grazing trespass on Cheyenne Reservation.	Jury verdict in favor of plaintiff in amount of $1,200 in damages and $248 in penalties.	Received June 10, 1955; closed June 3, 1957. On Feb. 15, 1962 government settled claim by accepting offer of compromise of $700 as payment in full from defendant.
506. Joe Riddle v. Guy L. Elroy, Virgil N. Harrington, area director of the Five Civilized Tribes, et al., USDC, ED, Okla.	Suit for injunction against further proceedings in the administration of Five Tribes Indian estates.	Case dismissed as to United States on Government motion.	Received May 20, 1968; closed Aug. 19, 1968.
507. Lloyd Ritchie v. Elsie McGee Rollins, et al., Grays Harbor County Superior Court, Wash.	Action to obtain payment of a cash bond executed in connection with a timber sales contract.	Stipulation and order entered dropping additional defense (Secretary of Interior, United States).	Received May 31, 1966; closed Aug. 23, 1966.
508. Riverside County Flood Control & Water Conservancy Dis. v. Robert F. Urton, et al., USDC, C. Dist., Cal.	Condemnation for flood control of land allotted to Agua Caliente Indians.	Judgment in amount satisfactory to Department of Interior ($36,674).	Received Aug. 28, 1971. This was 1 of 3 condemnation cases involving the Riverside County Flood Control and Water Conservancy District in the period from 1961 to 1970. The other 2 were also settled by award of satisfactory judgments.
509. In the matter of Hazel Robinson. Klamath County Circuit Court, Oregon.	Action under Klamath Termination Act	Order of dismissal entered for lack of prosecution of case by plaintiff.	Received July 2, 1958; closed Dec. 12, 1966.
510. U.S. v. Lucille Robinson. USDC, ED, Okla	Action to quiet title to Choctaw-Chickasaw tribal lands.	Judgment for plaintiff	Received Jan. 7, 1965; closed Mar. 23, 1966.
511. Re Betty Zane Rodgers. No Court, Arizona	Action to enjoin operation of trading post on Navaho reservation without a license.	Case disposed of since matter was settled by issuance of tribal lease for land involved in trading post operation.	Received Feb. 6, 1959; closed Aug. 16, 1963.
512. Henry Rollingson, et al. v. Blackfoot Tribal Court of Blackfoot Indian Reservation, et al. USDC, Montana.	Action for writ of prohibition to restrain tribal court from interfering with plaintiff possession under a lease.	Determination was made that Government would not participate in proceedings. Litigating parties apparently made settlement in the dispute without further action in Federal district court.	Received Sept. 15, 1964; closed Jan. 4, 1965.
513. Edgar Rundle v. Udall. USDC, Dist of Col	Action to set aside orders of Department of Interior withdrawing land from entry and for a declaration that plaintiff mining claim is valid.	Dismissal of complaint was affirmed on appeal to U.S. Court of Appeals for the District of Columbia. The U.S. Supreme Court denied petition for certiorari.	Received Feb. 4, 1965; closed Oct. 12, 1966.
514. Running Horse v. Sec'y of Interior. USDC, District of Columbia.	Action to enjoin payment of claims of South Dakota for old age assistance payments from trust property of deceased Indian.	Judgment for plaintiff in Federal district court; Government appeal was dismissed by U.S. Court of Appeals for the District of Columbia.	Received July 12, 1960; closed Sept. 13, 1963. At issue was plaintiff contention that Secretary of Interior had erred in allowing claim of South Dakota for old age assistance rendered to an Indian during his lifetime. State sought to collect on claim from the trust assets of decedent.
515. US v. Russell Hughes, et al. USDC, ED, Okla.	Action to quiet title to Choctaw-Chickasaw tribal lands.	Judgment for plaintiff	Received Dec. 31, 1964; closed Apr. 5, 1967.
516. Sac & Fox Tribe of Mississippi in Iowa, et al, v. South Tama County Community School Dist. et al. USDC, ND, Iowa.	Action by tribe and tribal council to require Interior Department to reopen and operate an Indian day school for grades 1 to 5.	Stipulation and dismissal entered after settlement of issue by execution of new contract with school district.	Received Sept. 27, 1968; closed Oct. 21, 1969.
517. Peter Saint Marks, et al. v. James Canan, et al. USDC, Montana.	Action for mandatory injunction requiring area director of BIA to approve constitution which would provide more equal representation in Indian tribal elections.	Judgment for plaintiff (judgment did not restrain or require action by Federal defense).	Received July 29, 1970; closed May 14, 1971. Tribe later submitted revised voting plan proposal.

518. In the Matter of Sakezzie v. Utah Indian Affairs Commission Utah.	Consideration of possible litigation against State of Utah and Utah Indian Affairs Commission for an accounting and recovery of money paid to State for use and benefit of Indians.	Investigation was conducted and it was decided not to file suit against the State. Matter had initially come to attention of Justice Department after case of Sakezzie v. Utah Indian Affairs Commission was filed to seek interpretation of provisions of Act of Mar. 1, 1933. That act had added certain lands, know as the Aneth extension, to the Navaho Indian Reservation.	Received May 15, 1963; closed Oct. 15, 1965. See case No. 742 below for additional information related to this case.
519. US v. Osevio Salgado. USDC, SD, Cal	Action to determine right to use tribal property	Judgment on merits for defendant	Received June 24, 1960; closed Apr. 8, 1964. Defense was partially based upon tribal custom. Decision was made by Solicitor General not to appeal decision of trial court.
520. In the Matter of the South Boundary of the Salt River Indian Reservation. No Court. Arizona.	Possible litigation over inclusion of island in Salt River as part of southern boundary of reservation.	Case closed since no formal request for action was made by Department of Interior.	Received Feb. 14, 1969; closed Jan. 6, 1970.
521. Harry Sampson v. Eben Tellivan, et al. Dist. Ct. 2d Judicial Dist., Washoe County, Nevada.	Action to remove tribal officials because they were not legally elected.	Opinion and decision entered dismissing complaint. Case was removed to Federal district court but later remanded.	Received Feb. 9, 1966; closed Jan. 17, 1967.
522. US v. Johnnie Sanders. USDC, ED, Okla	Action to recover $274 in trespass damages to tribal lands.	Determination was made that any judgment obtained would be uncollectable. Complaint was dismissed on Government motion.	Received July 28, 1964; closed Feb. 1, 1965.
523. Shepherd Sanders v. City of Palm Springs, et al. Riverside County Superior Court, Cal.	Suit for personal injuries based upon negligence in maintenance of road.	Court sustained Government motion to quash service of process and dismiss case as to Government for lack of jurisdiction.	Received Aug. 5, 1968; closed Sept. 26, 1968. No apparent reason for service on United States, not named as defendant and no apparent interest of United States involved.
524. Re Emmet D. Sarracino. No Court. Cal	Request for action to recover $300 due on loan to an Indian.	Case closed since investigation showed claim was uncollectable.	Received Sept. 14, 1967; closed Oct. 4, 1967.
525. Re Emma Sauter. No Court. Montana	Request for action to collect operation and maintenance charges on Blackfoot irrigation project.	Case disposed of by payment of claim in full ($3,838.50).	Received Sept. 14, 1965; closed May 18, 1966.
526. Re Robert & Marcia Schultz. No Court. Oregon.	Possible litigation involving title to land on Umatilla Indian Reservation.	Case closed since determination was made that no immediate request for action would be made, although a future request was not ruled out.	Received June 30, 1964; closed July 22, 1964.
527. US v. William Schultz, and John Spear. USDC, ND, Cal.	Action to recover $1,464 double damages for timber trespass on Round Valley Indian Reservation.	Stipulation and dismissal entered after receipt of $732.03 as payment in full.	Received Apr. 18, 1963; closed June 9, 1965.
528. Re Lyndon Scott. No Court. Oklahoma	Request for action to recover $2,000 for use and occupancy of Indian allotment by trespasser.	Case returned to Department of Interior since trespasser desired to settle claim.	Received Apr. 30, 1965; closed July 12, 1965.
529. Carl A. Seifert v. Sec'y of the Interior, et al. USDC, Montana.	Action to quiet title to land between low and high water mark adjacent to plaintiff land.	Judgment entered granting defendant motion to dismiss.	Received Oct. 24, 1967; closed Dec. 10, 1968.
530. Alvin Settler v. Yakima Indian Tribal Council, et al. USDC, ED, Wash.	Action against Yakima Tribe regarding enactment of tribal fishing ordinance.	Stipulation entered and case dismissed without prejudice.	Received June 14, 1965; closed Jan. 23, 1967. Plaintiff decided to await outcome of certain other litigation involving the same general issues.
531. Alvin Settler v. H. G. Maison and Robert W. Schoning. USDC, Oregon.	Action by Yakima Indian to enjoin enforcement of State game laws as applied to his fishing activities allegedly protected by treaty.	Case voluntarily dismissed by plaintiff	Received July 20, 1965; closed Feb. 8, 1966.
532. Alvin Settler v. Yakima Tribal Court. USDC, ED, Wash.	Petition for writ of habeas corpus brought by Indian found guilty of violating tribal ordinance and placed in tribal prison.	Order dismissing petition by trial court was appealed to U.S. Court of Appeals for 9th Circuit where it was consolidated with another case on same subject. See Nos. 531 and 533.	Received Nov. 17, 1967; closed Dec. 14, 1969.
533. Mary Gould Settler, enrolled member of Yakima Tribe v. Charles S. Spencer, Supt. of Yakima Indian Reservation. USDC, ED, Wash.	Claim that proceedings in tribal court which led to conviction of Yakima Indian violated Civil Rights Act of 1968. This case related to case Nos. 531 and 532.	Judgment for defendant	Received May 9, 1968; closed Feb. 12, 1969.

Name of case or claim and court in which filed	Subject	Result or status	Remarks
534. Florence Parker Severtson, et al. v. United States, et al. USDC, Montana.	Action to compel issuance of fee patents for plaintiff allotments.	Case disposed of by dismissal following amicable settlement between plaintiff and Department of Interior.	Received May 26, 1964; closed Aug. 18, 1964.
535. Bd. of County Com'rs as the governing board and drainage com'rs of Shahan Drainage Dist. v. Shahan Drainage Dist. and all lands embraced therein, et al. Wagoner County Dist. Ct., Okla.	Action to convert drainage district, including certain restricted Five Tribes land, to a conservancy district under Oklahoma law.	Election of United States not to remove and consent for judgment at convenience of trial court. The court ordered Indian land included in the conservancy district but enjoined the district from collecting or assessing taxes thereon as long as land remains in restricted tax-exempt status.	Received Aug. 6, 1963; closed Oct. 18, 1963.
536. Pete Shenan v. Lloyd & Rose O'Bourke, et al. 10th Cir. Ct., Jackson County, S. Dakota.	Action to foreclose mortgage on Indian trust land under 25, U.S.C., 483a.	Order entered for dismissal of complaint as to United States.	Received Oct. 1, 1968; closed Dec. 2, 1968.
537. Re Ed Shepherd. No. Court. Alaska	Action to recover various amounts due Indian enterprise.	Case closed after Department of Interior withdrew request for action.	Received Dec. 8, 1966; closed Apr. 13, 1967.
538. Charles B. Sherrill, et al. v. McShan. USDC, Ariz.	Action to establish title to lands claimed to have accreted to Fort Mojave reservation land.	Government intervened as plaintiff; Government lost at trial court level. On appeal, the lower court judgment was affirmed by the U.S. Court of Appeals, 9th Circuit.	Received Feb. 7, 1962; closed Oct. 18, 1966. Decision was made to appeal no further.
539. James F. Shoemaker v. Harold W. Schunk, administrator of the estate of David Andrews. Circuit Court, 11th Judicial Dist., Tripp County, South Dakota.	Action to recover tort claim from restricted estate of deceased Indian.	Stipulation entered for dismissal without prejudice	Received June 11, 1964; closed Nov. 23, 1964.
540. US v. Jessica Short. USDC, WD, North Carolina.	Action to recover $2,520 due under Indian lease	Judgment for plaintiff and collection of $2,000 as satisfaction of judgment.	Received Sept. 14, 1964; closed July 24, 1969.
541. Joseph Simmons, et al. v. Chief Eagle Seelatsee, et al. USDC, ED, Wash.	Action by descendants of Yakima allottee to declare unconstitutional the act of Congress restricting enrollment and right to inherit to persons of ¼ or more Yakima blood.	Judgment entered dismissing case with prejudice. Matter was certified to U.S. Supreme Court where judgment below was affirmed per curiam.	Received Jan. 18, 1965; closed July 1, 1966.
542. Earlene Ida Abbott Simons v. Stewart L. Udall, et al. USDC, Montana.	Action to set aside approval of Indian will by Secretary of the Interior.	Summary judgment for defendant	Received June 8, 1965; closed Mar. 6, 1968.
543. Amtitle Trust Co., et al. v. Erwin P. and Marjorie Warner, et al. USDC, Ariz.	Request that Justice Department file representation of interest in behalf of United States and Fort Mojave Tribe in 3 actions pending in Arizona courts involving title to land claimed by Indians.	Request came from tribe; since no formal, direct request came from Interior Department case was closed to be reopened if request subsequently was received.	Received Dec. 28, 1970; closed July 23, 1971.
544. Bice Farms, Inc. v. Cordelia Yellow Elk, et al., USDC, S.D.	Action to partition land in which Rossebud Indians own ¾ interest.	Stipulation and Order entered dismissing action after settlement was negotiated.	Received Aug. 28, 1970; closed Oct. 18, 1971.
545. Lyman Lawrence Big Eagle v. US, USDC, S.D.	Claim by individual Indians for just compensation for lands taken for Fort Randall Dam.	Judgment for plaintiff, Solicitor General decided not to appeal decision to 8th Circuit.	Received Apr. 7, 1969; closed Oct. 28, 1971. Judgment was entered on behalf of 16 individual claimants.
546. Big Horn County Elec. Coop., Inc. v. Tyrone L. Ten Bear, US, et al. USDC, Mont.	Condemnation action for powerline right-of-way across trust land of a Crow Indian.	Judgment in amount satisfactory to Department of Interior ($320).	Received May 24, 1971; closed Oct. 26, 1971.
547. Big Horn Elec. Coop., Inc. v. Myrtle Bearcloud Blaine, et al., USDC, Mont.	do	Judgment in amount satisfactory to Department of Interior ($550).	Received June 16, 1971; closed Aug. 27, 1971.
548. Woodrow Bussey, et al. v. US, USDC, WD, Okla.	Action for declaratory judgment that plaintiff own Arkansas River navigation system.	Plaintiff moved for dismissal without prejudice	Received Dec. 13, 1971; closed Feb. 21, 1972.

549. State of California v. Peter Dugan and US, USDC, S.D. Cal.	Action to condemn restricted Indian land	Judgment in amount satisfactory to Interior ($36,187.16).	Received June 13, 1968; closed Sept. 23, 1971.
550. Horton Capoeman v. US, C.Cls	Action to recover amount deducted from proceeds of timber sold from allotted Indian lands in 1943–46 (deductions to defray expenses of sale).	Judgment for defendant	Received Jan. 2, 1970; closed Aug. 9, 1971.
551. US v. W. J. Ceresola, USDC, Nev	Grazing trespass on Pyramid Lake Indian lands	Judgment for plaintiff and collection of $5,500 in satisfaction of judgment.	Received Nov. 24, 1954; closed Nov. 23, 1971. When matter first arose in 1954, a consent decree was eventually entered under which defendant was enjoined from permitting his cattle to roam on Indian land and was required to pay $1,561 damages. Case was reopened in 1969 when grazing violations again became prevalent.
552. Chelan County v. E. H. Lovitt, et al., Chelan Co. Sup. Ct., Wash.	Request by Department of Interior to restrain enforcement of local zoning regulations against lessee of restricted allotment.	Case was mooted by renewal of negotiations between lessee and county regarding use of land. Request for action was withdrawn.	Received Sept. 15, 1969; closed Oct. 27, 1971.
553. John E. and Madeline Colliflower v. Rogers C. B. Morton, et al., USDC, Mont.	Action to declare Fort Belknap tribal ordinance void (ordinance had declared John Colliflower an undesirable person).	Action was dismissed and ordinance was rescinded	Received June 17, 1971; closed Jan. 21, 1972.
554. US v. Mary Daniels, et al., USDC, ED, Okla.	Action to quiet title to Choctaw-Chickasaw land	Default judgment for plaintiff	Received Sept. 16, 1969; closed Dec. 6, 1971.
555. Deganawidah-Quetzalcoat Univ., et al. v. Elliot Richardson, et al., USDC, ED, Cal.	Action to enjoin transfer to University of California of land sought by plaintiff.	Suit indefinitely removed from trial calendar by stipulation of parties.	Received Nov. 18, 1970; closed Aug. 25, 1971.
556. Walter Dickson v. Harry K. Jones, et al., USDC, Ariz.	Action for preliminary and permanent injunctions against tribal officials and Secretary of Interior to prevent tribal election from being held.	Case dismissed after time for administrative appeal by plaintiff had lapsed.	Received Feb. 1, 1971; closed Oct. 27, 1971.
557. Dry Creek Rancheria et al. v. Sec. of Int. et al., USDC, Cal.	Action to require Department of Interior to furnish adequate domestic water supply to Rancheria sanitation system.	Case dismissed after negotiations initiated for improvements in water delivery system.	Received Aug. 11, 1969; closed Sept. 27, 1971.
558. City of Escondido v. Escondido Mutual Water Co., et al., San Diego Co., Sup. Ct., Cal.	Request by California Indian Legal Services that United States institute proceedings to protect rights of Pala and Rincon Bands of Mission Indians in waters of San Luis Rey River.	United States did not intervene because it felt interests of Indians could best be served if it did not submit to jurisdiction of State court. Action has been held in abeyance pending outcome of Rincon Band v. Escondido Mutual Water Co., et al., No. 611 of this tabulation.	Received Mar. 7, 1969; closed Dec. 6, 1971.
559. In the Matter of Wallace Friend, no ct., Okla.	Request for action to evict trespasser from Osage Indian allotment (land occupied under unapproved lease).	Returned to Department of Interior for further administrative action.	Received Oct. 4, 1971; closed Jan. 17, 1972.
560. Robert C. Garvie, et al. v. Rogers C. B. Morton, et al., USDC, S.D.	Action to enjoin State prison from interfering with right of communications of Indian prisoners.	Order entered dismissing complaint as to Federal defendants.	Received Jan. 21, 1971; closed Aug. 10, 1971.
561. Lydena Moran Gayton, et al. v. Rogers C.B. Morton, et al., USDC, S.D.	Action to establish right of nonreservation Indians to relocation assistance.	Order of dismissal entered after plaintiff applications for vocational training were approved.	Received Apr. 6, 1971; closed Sept. 16, 1971.
562. Grand River Dam Auth. v. US as trustee for the Quapaw Tribe of Okla., et al., USDC, ND, Okla.	Action to condemn allotted Indian lands for transmission line right-of-way.	Judgment in amount satisfactory to Department of Interior ($1,324.85).	Received Jan. 12, 1970; closed July 13, 1971.
563. George Groundhog, et al. v. Sec. of Int., et al., USDC, ND, Okla.	Action to enjoin Secretary of Interior, principal chief of Cherokee Nation, and others from carrying out certain tribal functions.	Judgment dismissing action affirmed on appeal to 10th Circuit.	Received June 23, 1969; closed Nov. 23, 1970.
564. Suzette Bridges Mills v. Frank Wright, et al., USDC, WD, Wash.	Action by Puyallup tribal member to set aside pending tribal election.	Complaint withdrawn after tribal elections conducted to apparent satisfaction of plaintiff.	Received Oct. 19, 1970; closed July 16, 1971.
555. Mod Dairies, Inc. v. US, USDC, N.M.	Action by Indian cooperative to enforce oral agreement and memo agreement regarding supply of dairy products to Navaho Indian schools.	Order entered dismissing complaint	Received Jan. 19, 1971; closed Sept. 10, 1971.

Name of case or claim and court in which filed	Subject	Result or status	Remarks
566. Verna Mullinex v. William Schlick, et al., Yakima Co. Sup. Ct., Wash.	Action for damages for prohibition of sale of restricted Indian land or, alternatively, for mandatory injunction to complete sale.	Case dismissed for failure of plaintiff to proceed with cause of action. United States represented defendant.	Received July 22, 1970; closed Jan. 4, 1972.
567. Public Service Co. of Okla. v. US, USDC, WD, Okla.	Action to condemn right-of-way for electric powerlines across allotted lands on Kiowa Indian Reservation.	Judgment in amount satisfactory to Department of Interior ($13,680).	Received Nov. 12, 1970; closed Aug. 11, 1971.
568. Rufus O'Neil, et al. v. Morris Doty, USDC, ED, Cal.	Action by Indian allottee to recover trespass damages and to enjoin trespass.	Case settled by compromise between parties	Received June 23, 1971; closed Nov. 5, 1971.
569. State of Oregon v. Umatilla Co., Ore., et al., USDC, Ore.	Condemnation action for highway across land allotted to Umatilla Indians.	Judgment in amount satisfactory to Department of Interior ($1,325).	Received Apr. 23, 1970; closed Aug. 11, 1971.
570. State of Oregon v. US and Maudie Craig Antoine et al., USDC, Ore.	Action to condemn land allotted to Umatilla Indians for restoration of Old Oregon Trail.	Case settled by acceptance of offer of $120 for land in question.	Received Oct. 14, 1970; closed July 15, 1971.
571. Quinault Tribal Coun., et al. v. US, et al., USDC, Ore.	Action to enjoin continued operations under 1950 timber sale contract due to alleged damages to fish production and ecology of area.	Dismissal entered after plaintiffs failed to proceed with their cause of action.	Received Oct. 15, 1970; closed Dec. 6, 1971.
572. In the Matter of Ory C. Helton, USDC, WD, Wash.	Proceeding for arrangement under Ch. XI of Bankruptcy Act. Specifically request for action to collect delinquent rentals from bankrupt lessee of tribal leasehold.	Tribe's claim paid in full by new tenant. Request for action withdrawn.	Received Mar. 15, 1971; closed Aug. 26, 1971.
573. Re Leo A. Henderson No ct., Okla	Request for action for damages for unauthorized use of Indian land for grazing ($220).	Case disposed of by payment of claim in full	Received Aug. 23, 1971; closed Dec. 15, 1971.
574. Dorothy Herman, et al. v. US, et al., USDC, S.D.	Action to enjoin State officials from requiring Rosegud Indians having automobile accidents on reservation to show financial responsibility.	Stipulation and order of dismissal entered	Recieved Oct. 5, 1970; closed Sept. 13, 1971.
575. Theodore Homer, et al. v. Sec. of Int., et al. USDC, Ariz.	Action to enjoin termination of plaintiff general assistantce benefits (Papago Indians).	do	Received May 7, 1969; closed Jan. 18, 1972.
576. A.A. Hopkins-Duke v. US, et al., USDC, Colo.	Action to declare Taylor Grazing Act unconstitutional and to enjoin Secretary of Interior from enforcing it.	Judgment dismissing action entered. Appeal to 10th Circuit dismissed.	Received Aug. 5, 1969; closed Sept. 26, 1971.
577. Lester Jessepe, et al. v. Jack Carson, et al., USDC, Kan.	Action to enjoin tribal election and to recognize results of prior election held by Prairie Bank of Pottawatomi Indians.	Parties stipulated to dismissal due to mootness of issues.	Received June 17, 1971; closed Dec. 10, 1971.
578. US, et al. v. Lake Co., et al, USDC, ND, Cal.	Suit to quiet title in distributees of upper Lake Rancheria.	Judgment in favor of plantiff	Received Feb. 17, 1967; closed Nov. 16, 1971.
579. Mescalero Apache Tribe, et al. v. Sec. of Int., et al., USDC, N.M.	Action to enjoin employment of non-Indians to replace Indian employees.	Judgment for defendant affirmed on appeal to 10th Circuit. Petition for certiorari denied by Supreme Court.	Received July 28, 1969; closed Dec. 21, 1971.
580. Rincon Band of Mission Indians v. Co. of San Diego, et al., USDC, SD, Cal.	Proposed action by Rincon Band to enjoin enforcement of San Diego County gambling ordinances on reservation.	No request was received for action by Government	Received Mar. 23, 1971; closed Oct. 27, 1971.
581. River Farms, Inc. v. Guy B. & Jane Fountain, et al., USDC, Ariz.	Request that Justice Department file representation of interest on behalf of Unted States and Fort Mojave Tribe in 3 actions pending in State court involving title to land claimed by Indians.	Request came from tribe; since no formal, direct request came from Interior Department, case was closed to be reopened if request was subsequently received.	Received Dec. 28, 1970; closed July 23, 1971.
582. Dan Jose Wilfredo de Segura v. Great Western Cities, Inc., Army Corps of Engineers, et al., USDC, N.M.	Action by individual of Mexican descent claiming large portion of Cochita Pueblo under alleged Spanish land grant.	Case dismissed for failure to state a claim upon which relief could be granted.	Received Aug. 11, 1971; closed Dec. 17, 1971.

583. Charles & Mary Sherrill et al. v. Frank B. McShan, et al., USDC, CD Cal.	Request that Justice Department file representation of interest on behalf of United States and Fort Mojave Tribe in 3 actions pending in State court involving title to land claimed by Indians.	See No. 581	Received Dec. 28, 1970; closed July 23, 1971.
584. US v. Lizzie Cat Silverhorn, USDC, WD, Okla.	Suit to eject Indian claimant from property devised to another under an approved will.	Default judgment entered for plaintiff	Received July 6, 1971; closed Sept. 22, 1971.
585. Clarence Smith, et al. v. US, et al., USDC, S.D.	Action to declare void a contract under which a Rosebud Sioux allottee conveyed his allotment to United States in trust for tribe in 1947 on condition that it be reassigned to individual who would care for allottee for remainder of his lifetime.	Stipulation and order of dismissal entered	Received May 7, 1970; closed Sept. 10, 1971.
586. In the Matter of the Society of Jesus. No court, Mont.	Request by tribal council that action be taken to enforce condition in a grant to the Society of Jesus that land be used only for the purpose for which it was granted.	File closed after request for action was withdrawn	Received Apr. 1, 1970; closed Aug. 31, 1971.
587. R. J. Studer & Sons v. US, et al., USDC, Mont.	Action against Fort Belknap Industrial Committee and United States for damages for breach of contract to build industrial park.	Case dismissed with prejudice as part of settlement	Received May 24, 1971; closed July 8, 1971.
588. United Tribes of Mendocino Co., et al. v. BIA, et al., USDC, ND, Cal.	Action to compel BIA to furnish Indians of terminated rancherias and Indians not living on or near reservations with the same benefits afforded other California Indians.	Stipulation and order of dismissal entered. Applications for benefits were expedited for individual Indians in the categories set forth in the original complaint.	Received Oct. 7, 1969; closed Sept. 3, 1971.
589. US v. C.S. Unruh, USDC, WD, Okla	Action to obtain possession of Kiowa allotment	Default judgment entered for plaintiff	Received June 28, 1971; closed Oct. 5, 1971.
590. US v. Mike & Vladimir Vulles, USDC, Mont	Action to establish title to a road right-of-way across Indian land.	Judgment for defendant in district court was reversed on appeal by United States to 9th Circuit.	Received Oct. 12, 1965; closed July 22, 1971.
591. City of Watonga v. US, USDC, WD, Okla	Action to condemn for city water supply purposes land allotted to Indians on Cheyenne and Arapaho Reservation.	Judgment in amount satisfactory to Department of of Interior ($26,000).	Received Feb. 17, 1971; closed Aug. 11, 1971.
592. Re Fred L. Wicks, no court, Cal	Proposed action to protect water rights appurtenant to patented Indian land under Act of Aug. 18, 1958.	Case closed after determination was made that there was insufficient evidence upon which to base a cause of action for infringement of water rights.	Received Jan. 8, 1969; closed Aug. 6, 1971.
593. Lillie Williams v. Salt River Pima-Maricopa Indian Community, USDC, Ariz.	Action to enjoin dismissal of plaintiff as supervisor of Head Start program without adequate hearing.	Request for action by Department of Interior withdrawn pending administrative review. Plaintiff had not exhausted her administrative remedies. Case put in abeyance until she had done so.	Received Aug. 28, 1970; closed Sept. 23, 1971.
594. Sam Yankee, et al. v. US, Sec. of Int., et al. USDC, Minn.	Suit to restrain defendant from regulating harvesting of wild rice by Rice Lake Indians on Big Rice Lake Wildlife Refuge.	Judgment for defendants	Received Sept. 9, 1968; closed Dec. 28, 1970.
595. Brenda Warwick v. Cheyenne River Sioux Tribe, et al., USDC, S.C.	Action to enjoin tribe and BIA officials from holding public sale of grazing rights at Cheyenne River Reservation in violation of plaintiff preference as tribe member.	Case dismissed on Government motion	Received May 6, 1969; closed Oct. 27, 1969.
596. Re Marie Washington. No court, Okla	Proposed action to quiet title to Choctaw-Chickasaw lands.	Matter returned to Department of Interior for further administrative action.	Received Feb. 14, 1966; closed Sept. 9, 1968.
597.			
598. State of Washington v. Charles Floyd. Clallam Co. Supr. Ct., Wash.	Prosecution of Clallam Indian for fishing contrary to State law.	Case dismissed on motion of prosecuting attorney.	Received Feb. 14, 1967; closed Feb. 28, 1967.
599. Re State of Washington Klickitat & Skamania Co. Supr. Cts., Wash.	Action to enjoin Yakima Indians from fishing at "usual and customary place" contrary to State laws.	File closed after motions for injunction were dismissed.	Received May 1, 1968; closed July 7, 1969.

Name of case or claim and court in which filed	Subject	Result or status	Remarks
600. State of Washington v. Theodore Eastman. Clallam Co. Supr. Ct. Wash.	Defense of Quileute Indian arrested by Washington fish and game officer for using set nets for fishing.	State dismissed case on its own motion----------	Received Oct. 17, 1968; closed Apr. 30, 1970.
601. State of New Mexico v. Aamodt, et al., USDC, New Mexico.	Prospective adjudication of water rights on the Pojoaque River in New Mexico. The United States intervened as a plaintiff to protect the water rights of the Tesuque, Nambe, Pojoaque, and San Ildefonso Pueblos.	Case remains open. Pretrial memoranda have been filed. Pretrial order has been signed. Issue of intervention in suit by additional pueblos is now before U.S. Court of Appeals, 10th Circuit.	Received Dec. 9, 1965.
602. Jackson Ames, et al. v. Walter J. Hickel, et al. USDC. N. Dist. Cal.	Suit to require defendants to provide plaintiffs living on Hoopa Valley Extension with adequate supply of uncontaminated water and decent housing and for other relief.	Case remains open. HEW investigated and determined that water system installed after recent flood was not adequate and took corrective action. Negotiations with contractor who installed housing are in progress.	Received Sept. 9, 1969.
603. U.S. v. State of Washington, et al. USDC, W. Dist., Wash.	Action to obtain declaration of right of Secretary of the Interior and Lummi Indians to control underground water development on Lummi Reservation.	Case remains open. Defendants have filed answers to complaint.	Received Sept. 20, 1971.
604. Colville Confederated Tribes v. William Boyd Walton, et al. USDC, E. Dist., Wash.	Claim by Colville Indians regarding right to use waters of reservation.	Case remains open. By agreement with tribes, United States has not intervened but has assisted in settlement negotiations which are in progress.	Received Aug. 31, 1971.
605. Mable Duncan, et al. v. Rogers C. B. Morton, et al. USDC, N. Dist., Cal.	Action for injunction and damages for failure to provide adequate water and sanitation facilities for Indians of Robinson Rancheria upon termination.	Case remains open. Amended complaint filed----	Received Sept. 2, 1971.
606. U.S. Gila Valley Irrigation Dist., USDC, Arizona.	Ancillary action under decree of June 29, 1935, complaining as to administration of decree of water commissioner.	U.S. Court of Appeals just recently affirmed decision of District court that certain practices permitted by water commissioner which gave more water to upstream users to the detriment of Indians dowsntream were in violation of the decree and must be discontinued.	Reopened June, 1956.
607. Re Live Oak Springs Water and Power Co. USDC. S.D. Calif.	Request by Interior for suit against trespasser on Campo Indian Reservation.	Case remains open. Complaint has been filed----	Received May 24, 1968
608. State of New Mexico v. Abbott, et al., USDC., New Mexico.	Adjudication of water rights on Santa Cruz River, N. Mex. United States intervened as plaintiff to protect the water rights of the San Juan, Santa Clara, and San Ildefonso Pueblos.	Case remains open. Report of special master was issued in December 1971, on question of intervention of pueblos on Rio Grande.	Received Aug. 15, 1966.
609. State of New Mexico v. Aragon. USDC, New Mexico.	Adjudication of water rights on Chama River, N. Mex.	Case remains open. Case is now before U.S. Court of Appeals, 10th Circuit, on question of intervention.	Received Sept. 27, 1961.
610. Rehner v. Hickel, et al., USDC, S. Dist., Calif.	Action to require United States to reimburse plaintiff for installation of sprinkling system on plaintiff's lands, for damages resulting from installation of pipeline across lands, and for declaratory judgment.	Case remains open. Court has handed down partial summary judgment for defendant.	Received Dec. 8, 1970.

611. Rincon Band of Mission Indians & LaJolla Band v. Escondido Mutual Water Co., et al. USDC, S. Dist., Calif.	Action to test validity of contracts permitting diversion of water on LaJolla Reservation and, transporting water across reservations for non-Indian use outside the reservations and to require Attorney General to provide legal representation for Indians in this action.	Case remains open. United States has participated in negotiations for settlement. Question of whether statute providing for representation of Indians by U.S. Attorney imposes mandatory duty on Attorney General is on appeal to Court of Appeals.	
612. Scholder v. U.S., et al., USDC, S. Dist., Calif.	Action to restrain expenditure of funds or other means of completing Pala irrigation system, Pala Indian Reservation.	Case remains open. Memorandum opinion and judgment by trial court Dec. 23, 1971. Court of Appeals affirmed expenditure of funds but remanded question of whether irrigation construction costs are reimbursable.	Received Sept. 13, 1968.
613. U.S. & San Carolos Irrigation & Drain. Dist. v. J. Edward Smith, et al. USDC, Arizona.	Action to enjoin pumping water from well in or near bed of Gila River in violation of decree of June 29, 1935 and for damages.	Case remains open. Proposed settlement is being considered. Mining company has discontinued pumping from well.	Received July 28, 1970.
614. John Soderman, et al. v. Dr. Evan Kackley, et al. Dist. Ct., 6th Judicial Dist., Idaho.	Action to adjudicate water rights in Gravel Creek, Idaho.	Government has filed a motion for clarification of scope of adjudication to determine whether Indian rights in Grays Lake are being determined. Gravel Creek is one of several streams feeding Grays Lake.	Received July 8, 1970.
615. Re Spokane Tribe of Indians. No Court. Washington.	Request for adjudication of waters of Chamakane Creek, Wash.	Proposed complaint and exhibits have been received from U.S. Attorney. Awaiting certain necessary data from Department of Interior. Case remains open.	Received Oct. 28, 1971.
616. Audrey Taylor, et al. v. Hickel, USDC, N. Dist.	Suit against Federal officials and the United States by 3 individual Indian residents of the Auburn Rancheria, California, to compel Federal officials to provide adequate water system for rancheria and to secure damages of $5,000 per plaintiff.	Case has been settled by stipulation for judgment in amount required for installation of new water system.	Received Apr. 13, 1970.
617. Re Westbrook Brothers. No Court. Calif.	Request for action to protect rights of Smith River Rancheria in waters of Lopez Creek.	Case remains open. United States representing Indians at hearings before Del Norte County Planning Commission has apparently forestalled certain activities that would have polluted Indians' water supply.	Received May 19, 1971.
619. Re Pyramid Lake Indians. No Court. Nevada.	Proposed action on behalf of Pyramid Lake Indians to quiet title to unused water rights of Truckee River.	Case remains open awaiting additional information from Interior as to exact scope of action desired.	Received Apr. 18, 1969.
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ADDITIONAL CASES INVOLVING INDIAN WATER RIGHTS

621. U.S. v. Ahtanum Irrigation District, et al. USDC. E. Dist., Washington.	Suit to quiet title to Yakima Indian rights to the use of waters of Ahtanum Creek.	Water rights of Indians affirmed under Winters Doctrine by U.S Court of Appeals. Certiorari denied by Supreme Court May 24, 1965.	Trial Court originally denied reserved water rights of Indians. Court of Appeals reversed and remanded.
622. In the Matter of the Determination of Rights to Use of Waters of Chiliwist Creek. Superior Court, Okanogon County, State of Washington.	Adjudication of Water Rights in Chiliwist Creek	Water rights of United States and of Theophile B. Charley, an Indian, were recognized in decree as claimed by United States.	United States, as trustee, represented Mr. Charley, an Indian in this adjudication.
623. Dry Creek Rancheria, et al. v. Walter Hickel, et al., USDC., N. Dist. Calif.	Action to require installations of adequate domestic water and sanitation systems and for damages.	Judgment for Federal defendants	U.S. officials investigated conditions on Rancheria and made certain improvements. Indians were not satisfied and continued with suit where they lost.

ADDITIONAL CASES INVOLVING INDIAN WATER RIGHTS—Continued

Name of case or claim and court in which filed	Subject	Result or status	Remarks
624. Ethel Whiterock, et al., v. Stuart Udall, et al. USDC., N. Dist., Calif.	Suit to compel installation of adequate water system on Guidiville Rancheria.	Case settled by entry of stipulated judgment in the amount required for costs of connecting Rancheria to a non-Indian water supply system in the area.	No comments.
625. Charlotte Tahhahwah v. Towne of Temple, et al. USDC., W. Dist., Oklahoma.	Action by an Indian to recover value of water taken from her allotted land for city water supply.	Judgment for plaintiff	Although United States was nominal defendant in this action, we supported the position of the Indian plaintiff which was adopted by the court.
626. Don Jose Wilfredo DeSegura v. Great Western Cities, Inc., et al. USDC., New Mexico	Suit claiming ownership of portion of Cochiti Indian Pueblo and seeking injunction against interference with plaintiff's rights and damages.	Action dismissed	United States defended as trustee on behalf of Indian Pueblo.
627. U.S. v. Fallbrook Pueblo Utility District, et al. USDC., S. D. Calif.	Suit for general adjudication of water rights in Santa Margarita River Watershed.	Water Rights of United States, its Indian wards in the watershed and all other water users in the watershed were catalogued.	Suit was filed primarily for the determination of water rights of Camp Pendleton military reservation but the water rights of the 4 Indian reservations in the watershed were asserted by the United States and recognized by the Court.
628. Texas and New Mexico v. Colorado; Original Jurisdiction Suit in Supreme Court.	Suit to compel State of Colorado to comply with provisions of an interstate compact apportioning the waters of the Rio Grande.	Case is being held in abeyance pursuant to a stipulation that the case will be held in abeyance so long as the State of Colorado meets its current obligations each year for the delivery of water under the compact.	United States intervened in this action to protect its interests and those of the Indian reservations and pueblos in the Rio Grande Basin.
629. Arizona v. California; Original Jurisdiction suit in Supreme Court.	Suit for interstate stream apportionment of Colorado River below Lee Ferry.	Supreme Court upheld apportionment under Boulder Canyon Act by Secretary of the Interior in letting contracts for the distribution of water. Also recognized the water rights of the United States and of the Indian reservations in the lower Colorado River Basin.	This case stands as a landmark in the recognition and definition of the "Winters" doctrine of reserved water rights for Indian reservations and other Federal reservations.
630. Hurley v. Abbott, USDC, Arizona	General adjudication of rights to use waters of Salt River below Roosevelt Dam.	This suit was initiated in early 1900's. Decree was entered Mar. 1, 1910, adjudicating water rights of Indians on the Salt River and Fort McDowell reservations. Case was reopened when attempt was made to enlarge the decree to cover rights upstream. Attempt was successfully resisted, 259F Sup 669 (D.C. Arizona 1966), because it was considered that this would have been detrimental to water rights and interests of White Mountain Apache Indians.	
631. Assiniboine & Sioux Tribes of Fort Peck Res. v. Mateiu Budak, USDC, Mont.	Action by Indian tribes to quiet title to bed of Missouri River and former bed where course of river changed by avulsive action.	Case remains open. Matter continues under investigation, and list of prospective defendants is being compiled.	Received Aug. 27, 1963.
632. US v. Archie Baldwin, et al., USDC, ED, Okla.	Suit to quiet title to certain Choctaw-Chickasaw lands and for damages.	Case remains open. Pretrial hearing set for Feb. 1, 1972.	Received Feb. 4, 1969.

633. Re Big Horn Valley Development Co, USDC, Mont.	Action by Government to cancel overlapping leases on Crow Reservation.	This case was consolidated with 2 other similar cases for a court test. Judgment in favor of Government cancellation of the leases was entered in November 1971. 27 other overlapping lease cancellation cases were held in abeyance pending outcome of test cases. Expectation is that remaining cases will be disposed of administratively by Department of Interior.	Received Sept. 14, 1965.
634. Cherokee Nation v. State of Okla, USDC, ED, Okla.	Action to quiet title to portion of Arkansas River bed in the Cherokee and Choctaw-Chickasaw Nations.	Case remains open. Special hearing set for Feb. 22, 1972 in Denver. Case has been to Supreme Court once on appeal and decision of trial and appeal courts was reversed and remanded.	Received Dec. 14, 1967.
635. Cocopah Tribe of Indians v. Walter J. Hickel, et al., USDC, Ariz.	Action for declaratory judgment that Cocopah Indians own certain riparian lands on west bank of Colorado River.	Case remains open. Status hearing set for Apr. 24, 1972.	Received Oct. 23, 1970.
636. US v. Louis Cook, et al., USDC, ED, Okla	Request for action to quiet title to Choctaw-Chickasaw tract.	Case remains open. Complaint has been filed; order has been entered for service by publication.	Received Mar. 17, 1969.
637. Leva S. Drummond, et al. v. Virginia Harragara Johnson, et al., Osage Co., D.C., Okla.	Suit to quiet title to land claimed to be restricted Indian land.	Case remains open; defendant (represented by U.S. Attorney) specially appeared and has denied jurisdiction.	Received Mar. 9, 1971.
638. Fort Mojave Tribe, et al. v. William L. LaFollette, et al.	Request that Justice Department file representation of interest in behalf of United States and/or Fort Mojave Tribe in 3 actions pending in State court involving title to land claimed by Indians.	Case is on appeal to 9th Circuit and United States has filed amicus br.	Received Dec. 17, 1970.
639. Re J. E. Haddock, et al. No court, Cal	Request for action to establish west boundary of Colorado River Indian Reservation.	Previous request for action was withdrawn in 1969; case reopened Oct. 19, 1970 and is under study by BIA.	Reopened Oct. 19, 1970.
640. Arnold E. Gemmill v. US, USDC, ED, Cal	Action to quiet title in Pitt River Indians to lands now in national forest and for damages for assault and for damages to individual Indians.	Order to stay proceedings entered Jan. 13, 1972. Case remains open.	Received Nov. 11, 1971.
641. Marian Law Shale Holloway v. US, et al., USDC, WD, Wash.	Action to quiet title to purchase Quinault allotment or, alternatively, for damages.	Case remains open. Litigation report and suggested pleadings have been forwarded to U.S. Attorney.	Received Aug. 3, 1971.
642. Re Donald L. and Lavon D. Leach. No court, Cal.	Request for action to determine boundary of Table Mountain Rancheria.	Complaint was filed by U.S. Attorney in December 1971. Case remains open.	Received Aug. 26, 1970.
643. Re Elmer I. Lorentson, et al. No court, Wash	Request for action to determine boundary between Fort Madison Indian allotment and adjacent non-Indian land.	Draft complaint forwarded to U.S. Attorney Sept. 13, 1971. Case remains open.	Received Aug. 13, 1971.
644 US v. Everett H. Prescott. Vernon Lueck v. John Racehorse, D.C. 7th Jud. Dist., Bingham Co., Idaho. Later moved to Fed. Dist. Ct.	Requested action to quiet title to accretion to allotted land.	Case remains open awaiting setting of trial date	Received Jan. 12, 1968.
645. US to Willard McEachern, et al., USDC, Mont.	Suit to quiet title to coal rights in lands of Fort Peck Tribes.	Case remains open; United States has moved for entry of default judgment (Jan. 13, 1972).	Received Nov. 16, 1970.
646. US v. J. A. Morrison, et al., USDC, ED, Okla.	Request for action for quiet title to tract of Choctaw-Chickasaw land.	Case remains open. Order has been entered for service by publication (Jan. 18, 1972).	Received Apr. 29, 1969.
647. Gilbert Nolan, et al. v. Richard P. Carlsberg, et al., USDC, ED, Cal.	Suit to establish boundary, quiet title, enjoin nuisance and review survey of certain allotted lands.	Case reset for trial (Apr. 4, 1972)	Received Aug. 4, 1970.
648. Northern Cheyenne Tribe v. William Hollowbreast et al., USDC, Mont.	Action by tribe to determine whether allottees, their heirs and assigns have an interest in certain minerals so that extension of reservation of minerals to the tribe violates 5th Amendment.	Case remains open. Government represents defendant and has moved for dismissal (Nov. 17, 1971).	Received Dec. 23, 1970.

ADDITIONAL CASES INVOLVING INDIAN WATER RIGHTS—Continued

Name of case or claim and court in which filed	Subject	Result or status	Remarks
649. US v. Northern States Power Co., USDC, WD, Wisc.	Request for action to determine ownership of certain lands adjacent to Lac Courte Oreilles Indian allotments.	Case remains open. Motion has been filed for leave to amend complaint.	Received Apr. 23, 1970.
650. Re Owens-Illinois, Inc. No Court, Wisc.	Request for action to quiet title to lands in Lac Courte Oreilles Indian Reservations claimed by State of Wisconsin or its grantees as school land.	Case remains open. Interior has been informed that requested action cannot be brought unless further evidence has been furnished.	Received May 21, 1971.
651. Re Sally Perry. No ct. Okla.	Request for action to quiet title to allotted land.	Complaint has not been filed to date. Case remains open.	Received Aug. 20, 1971.
652. Oran B. Phillips v. Omaha Tribe of Indians. Thurston Co. D.C., Neb. Later removed to USDC, Neb.	Request for action to quiet title to, and obtain possession of, accreted lands on Omaha Indian reservation.	Answer, embodying counterclaim, was filed July 15, 1971. Case remains open.	Received Aug. 5, 1971.
653. US v. C. J. Riley, Co. Assessor, Love Co., et al., Okla., USDC, ED, Okla.	Request for action to quiet title to Choctaw-Chickasaw tract.	Disclaimers filed by certain defendants (Jan. 4, 1972). Case remains open.	Received Feb. 27, 1969. This is 1 of 2 quiet title cases involving Love County Assessor. The other has gone to default judg.
654. Sierra Pacific Industries v. Warren Blake, et al. Removed to USDC, ND, Cal.	Request the United States represent Indian defendants in action to enjoin closing of road across Indian allotment.	Petition has been filed to remove to Federal District Court (Dec. 28, 1971).	Received Dec. 28, 1971.
655. US v. Joseph G. Smith v. Carlos R. Lavender, et al., USDC, ND, Cal.	Request by allotted Indians that Government represent them in quiet title action brought against them.	Case remains open on appeal to 9th circuit.	Received Apr. 1, 1968.
656. US v. Texas & Pacific Railway Co., et al., USDC, ND, Okla.	Request for action to quiet title to Osage land.	Case remains open and pretrial briefs have been filed.	Received Aug. 13, 1970.
657. US v. Wayne Watson, et al., USDC, ED, Okla.	Quiet title action under Choctaw Termination Act.	Case remains open. Motion has been filed to obtain service by publication. This is 1 of 10 such quiet title cases pending in Oklahoma.	Received Oct. 1, 1969.
658. US v. Fremont C. Woller et al., USDC WD, Wisc.	Action to quiet title to Indian allotment.	Case remains open on appeal to 7th circuit.	Received July 24, 1967.
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660. US v. Lewiston Lime Co. USDC, Idaho.	Action to recover $75,000 rentals and royalities under mineral lease of limestone from Nez Perce Tribe.	Case remains open on appeal to 9th Circuit. Hearing set Feb. 9, 1972.	Received Mar. 28, 1960.
661. Auk-Quan Tribe of Indians v. Kunz, USDC, Alaska.	Action by tribe for damages for use of town lots in Juneau Indian Village by Indians alleged not to be entitled thereto.	Case remains open. Amended complaint filed June 16, 1971.	Received Nov. 18, 1970.
662. US v. Enrest A. Benson, USDC, ND, Calif.	Action for $5,200 double damages for timber trespass on Hoopa Valley Tribal lands.	Judgment entered July 25, 1966. Defendant is paying off judgment in installments. Case remains open pending payment in full.	Received Mar. 22, 1966.
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664. US v. Consolidated Mines and Smelting Co. Ltd., et al., USDC, ED, Wash.	Action to recover $2,209 for timber trespass on tribal land.	Case remains open. Judgment for plaintiff affirmed on appeal to 9th Circuit. Rehearing denied.	Received Sept. 14, 1960.
665. US v. Frank E. Lorton, et al., USDC, ED, Wash.	Request for action for fire suppression costs on tribal land and to require trespassers to move buildings which encroach on tribal land.	Case remains open. Complaint, answer, and counter-claim have been filed.	Received Oct. 16, 1970.

666. US v. Dale K. Petty, USDC, ED, Wash	Request for action to collect delinquent agricultural rentals on Yakima allotments.	Case remains open. On Jan. 10, 1972 U.S. Attorney forwarded check for $1,000 payable to United States as full settlement. Claim is for $2,059. Offer to compromise is under consideration.	Received Feb. 5, 1971.
667. Edwina Siutza, et al. v. Zuni Housing Auth., et al. USDC, N.M.	Action by individual Zuni Indians to collect damages for use of tribal land assigned to them when used in tribal housing project.	Case remains open. Interior requested on Nov. 23, 1971, that United States represent Zuni Tribe. Litigation report requested.	Received Oct. 4, 1971.
668. US v. Tempe Equipment & Contracting Co. USDC, Ariz.	Claim for $51,300 damages resulting from flooding of Indian lands.	Case remains open on appeal to 9th circuit. Jan. 18, 1972, stipulation and order dismissing appeal of US entered. Lower court judgment had been in favor of defendant.	Received Dec. 18, 1967.
669. US v. Timber Access Industries and United Pacific Insurance Co. USDC, Ore.	Request for action to collect amount due for timber removed under timber sales contract on Warm Springs Reservation and for damages for failure to remove slash.	Motion to dismiss set-off and counter-claim of defendant has been filed. Case remains open.	Received Mar. 20, 1970.
670. US v. Elden A. Vavra, USDC, Neb	Request to collect $275 delinquent rentals on tribal leased lands.	Complaint filed Jan. 26, 1972	Received Aug. 6, 1970.
671. Emma Zimga, et al. v. US & David B. Estes, USDC, S.D.	Action to collect damages for trespass on Rosebud allotment $46,967.	Case remains open pending outcome of settlement negotiations.	Received June 8, 1971.
672. US v. Glenn M. Clarke, USDC, Alaska	Action to enjoin continuing road trespass on Indian allotment.	Case remains open. Depositions are underway	Received May 20, 1968.
673. US v. A. Amos Hopkins-Duke, et al., USDC, Ariz.	Request for action to remove Indian improvements from public lands.	Hearing set for Jan. 31, 1972, on motion for summary judgment. Case remains open.	Received Sept. 15, 1971.
674. US v. Kabinto, USDC, Ariz	Action to remove Navajo Indians from land awarded to Hopi Tribe in Healing v. Jones.	Case remains open pending appeal of entry of summary judgment for plaintiff. Case on appeal to 9th circuit.	Received June 10, 1966.
675. US v. Juanita Laing, USDC, C.D. Cal	Request for action to obtain possession of 3 mining claims on which no discovery has been made.	Case remains open, and plaintiff has moved for summary judgment.	Received Nov. 12, 1970.
676. US v. George LeBow. USDC, N.M	Action to obtain possession of land on Tesuque Pueblo.	Case remains open. Pretrial conference was held Dec. 7, 1971.	Received July 19, 1971.
677. Ernest Salgado, et al. v. County of Riverside, Sec. of Int., et al. USDC, CD, Cal.	Injunctive action against interfering with holding rock festival on assigned land on Cahuilla Indian Reservation.	Case remains open pending appeal of dismissal of complaint to 9th Circuit.	Received Aug. 18, 1970.
678. A. W. Moursund v. Frank & George Braden. D.C. Osage Co., Okla.	Request for action to prevent owner of 7/189 interest in Osage allotment from excluding from possession lessee of 182/189 restricted interest.	Case remains open awaiting trial of related case and appeal of related decision to Oklahoma Supreme Court.	Received June 23, 1970.
679. US v. Herbert Rittel. USDC, S.D	Action to require trespasser to remove his property from Rosebud allotment.	Case remains open. Complaint filed Dec. 6, 1971	Received Nov. 24, 1971.
680. Harry Sampson, et al. v. US, et al., USDC, Nev.	Action for declaratory judgment to determine which Indians are entitled to reside on Reno-Sparks Indian Colony.	Case remains open pending ruling on Government motion to dismiss for lack of jurisdiction.	Received Aug. 23, 1971.
681. US v. Robert and Charles Santiacum. USDC, WD, Wash.	Action to remove Indians from occupancy of Puyallup lands without permission of tribe.	Case remains open. Order granting preliminary injunction has been entered.	Received Aug. 27, 1971.
682. US v. Wilfred Segura. USDC, N.M	Request for action to enjoin trespass on Cochiti Pueblo.	Case remains open. Order enjoining defendant from doing any further acts with regard to property of Pueblo Cochiti was entered Aug. 17, 1971. There is evidence that the trespass is continuing ed plaintiff seeks to have defendant held in contempt.	Received Mar. 26, 1969.
683. US v. Sun Valley Citrus Co. USDC, Ariz	Request for action to obtain possession of Colorado River tribal land held under unapproved lease.	Case remains open. In January 1971, order was entered denying defendant dismissal motion and motion for summary judgment but motion to abate further proceedings was granted.	Received June 8, 1970.

Name of case or claim and court in which filed	Subject	Result or status	Remarks
684. Re Thermo Dyne Corp. No court, Okla.	Request for action to require removal of pipeline across Kiowa Indian allotment and for damages.	Case remains open pending filing of complaint by U.S. Attorney.	Received Aug. 30, 1971.
685. Mary C. Vincenti, et al. v. Betty Lou Wilcoxson Harris, et al., USDC, N.M.	Action to recover possession of allotments under 25 U.S.C. 345, and for damages.	Case remains open. Nonjury trial set for Jan. 25, 1972.	Received Aug. 5, 1970.
686. Archie L. Mason, et al. v. C.Cls.	Action to recover from United States the amount paid State of Oklahoma as estate tax on head rights owned by the estate of Rose Mason, unallotted Osage.	Case remains open. Cross-motions for summary judgment filed Dec. 14, 1971.	Received Dec. 15, 1970.
687. Big Horn County Electric Coop., Inc. v. Emma Catham Standish, US, et al.	Condemnation for powerline across trust land of Crow Indian Reservation.	Case remains open awaiting trial.	Received May 24, 1971.
688. California v. Flora A. Cruz, et al., USDC, SD, Cal.	Condemnation of Indian allotment for highway purposes.	Case remains open. Settlement conference set for Jan. 25, 1972.	Received Sept. 3, 1963.
689. Coachella Valley Water Dist. v. US, et al.	Condemnation for channel for storm water on lands allotted to individual Indians of Agua Caliente Reservation.	Case remains open. Stipulation and settlement set for court approval on Jan. 7, 1972.	Received Jan. 14, 1970.
690. Re Arthur L. Gadley, et al. No court, Wash.	Request for representation of Yakima Indian in suit for damages resulting from condemnation of right-of-way by State.	Case remains open awaiting receipt of information from Department of Interior.	Received Sept. 28, 1971.
691. Independent School Dist. No. 25 v. Ruth Mary Tall Chief, et al. USDC, ND, Okla.	Condemnation of land subject to mineral interest of Osage tribe.	Case remains open. Notice of appearance filed by Government on Dec. 16, 1971.	Received Oct. 26, 1971.
692. Kiowa County Bd. of Com'rs v. Carrie Mammedaty, et al., USDC, WD, Okla.	Condemnation for highway of land allotted to Kiowa Indian.	Case remains open awaiting entry of judgment.	Received July 26, 1971.
693. Oklahoma Gas & Electric Co. v. U.S., et al., USDC, WD, Okla.	Condemnation of right-of-way for electric power line across allotted Indian land.	Case remains open; jury trial demanded after entry of objections to commissioner's award.	Received Sept. 30, 1971. This is 1 of 16 condemnation cases filed against Indian land allotments by the Oklahoma Gas & Electric Co. in September 1971.
694. State of Oklahoma v. Harold & Celestia West, et al., USDC, ND, Okla.	Condemnation for highway of land allotted to Osage Indian.	Case remains open. Appraisal report received by U.S. Attorney on Jan. 24, 1972.	Received Oct. 20, 1971.
695. US v. City of Pawhuska. USDC, ND, Okla.	Request for action for damages for taking of Osage Tribal mineral rights in reservoir constructed by city.	Case remains open. Complaint filed Jan. 11, 1972.	Received Dec. 15, 1970.
696. Riverside Co. Flood Control & Water Conservancy Dist. v. James Steve Saubel, Jr., et al., USDC, CD, Cal.	Condemnation of allotted Indian land at Palm Springs for flood control.	Case remains open. Status hearing reset for date after Jan. 11, 1972.	Received May 13, 1971.
697. State of Washington v. Harry Moses, et al., USDC, WD, Wash.	Condemnation of land for access road.	Case remains open and trial has been set for Mar. 30, 1972.	Received May 26, 1971.
698. State of Washington v. Bertha George Dan, et al., Skagit Co. Supr. Ct., Wash.	Condemnation for highway of individually-owned Indian lands.	Case remains open, having been refiled in Federal district court on Jan. 14, 1972.	Received Oct. 21, 1971.
699. Dolly Custer Akers v. Dept. of Int., USDC, Mont.	Action to review Department of Interior approval of Indian's will and for allowance of dower.	Case remains open on appeal of summary judgment in favor of defendant to 9th Circuit.	Received Oct. 14, 1970.
700. Velma Rose Bighart v. John Pappan, Supt. of Osage Indian Agency, et al., USDC, ND, Okla.	Suit for review of Department of Interior approval of Osage Indian's will.	Case remains open. Amended complaint filed, December 1971.	Received Dec. 15, 1969.
701. Nettie S. Crowe v. Eastern Band of Cherokee Indians, Inc., et al., USDC, WD, N.C.	Action to enforce consent judgment for disposition of assignment of tribal land among heirs of deceased tribal member.	Case remains open. Defendants have moved for dismissal.	Received Aug. 11, 1971.

702. Doris Ann Whitetail Parker, et al. v. John Pappan, Supt. of Osage Indian Agency, et al., USDC, ND, Okla.	Action to obtain review of administrative action regarding Indian will.	Case remains open pending ruling on Government dismissal motion.	Received Feb. 8, 1971.
703. Maude Kelly, et al. v. Dept. of Int., et al., USDC, ED, Cal.	Action pertaining to election for termination of Jackson Rancheria.	Case remains open. Cross-motions for summary judgment have been filed.	Received Feb. 24, 1969.
704. Therese & Bessie Ray Boggs v. Rogers C.B. Morton, et al., USDC, ND, Cal.	Request for suit for damages for failure to provide water and sanitation facilities to Scotts Valley Rancheria.	Case remains open. Amendment to answer filed Dec. 23, 1971.	Received Sept. 17, 1971.
705. ----------	----------	----------	
706. Elsie May Pikok Crow v. US, USDC, Alaska.	Action by Indian for allotment in Alaska----------	Case remains open. United States has moved for dismissal under F.R.C.P. Rule 12(b).	Received Oct. 13, 1971.
707. Amelia Delano Curtis, by her mother Shirley Emery Curtis v. US, et al., USCD, ND, Calif.	Action for judgment against United States for share of Cheyenne and Arapaho tribal fund.	Case remains open. Plaintiff has moved for leave to amend complaint. Hearing set Jan. 13, 1972.	Received Nov. 6, 1970.
708. Robert N. Greenewald, et al. v. Rogers C. B. Morton, et al., USDC, Alaska.	Class action by natives for allotments in Tongass National Forest based upon occupancy by their ancestors.	Case remains open. Government motion for extension of time for answer or other pleadings submitted Jan. 14, 1972.	Received Nov. 2, 1971.
709. Nathaniel A. Fields, et al. v. US, C. Cls.------	Claim for oil royalties on Creek allotment----------	Case remains open. On Mar. 20, 1970 court entered opinion denying defense motion for summary judgment and suspended all proceedings pending final determination of any action brought by plaintiff on question of heirship in Oklahoma State courts.	Received Feb. 18, 1969.
710. Denise Skeet, et al. v. Tucson Gas & Electric Co., et al., USDC, N.M.	Action to rescind approval of grant of right-of-way for transmission line.	Case remains open. Case set for oral argument Jan. 10, 1972 on defense motion to dismiss.	Received Nov. 15, 1971.
711. A & B Rol-Away Rentals v. Crow Tribe of Indians et al., USDC, Mont.	Action to collect damages for failure of Crow Tribe to return rented property. (No Federal defendants.)	Complaint and summons filed July 29, 1971; case remains under observation pending outcome of litigation.	Received July 29, 1971.
712. Affiliated Ute Citizens of Utah v. US, USDC, Utah.	Action by mixed blood Ute Indians for a declaration that they are the owners of 27 percent of the value of the mineral estate of 1,200,000 acres.	Case remains open pending decision by Supreme Court. Certiorari granted Feb. 1, 1971.	Received May 2, 1968.
713. Re Agua Caliente Band of Mission Indians (guardianship and conservatorship proceedings under Allotment Equalization Act). Supr. Ct., Riverside Co., Cal.	Request to have regional solicitor appointed to handle matters stemming from actions by conservators and guardians of Palm Springs Indians.	Case remains open on appeal to District Court of Appeals, 4th Appellate District of California.	Received May 25, 1967.
714. Alvin and Ivan Anderson v. Rogers C. B. Morton, et al., USDC, ND, Cal.	Action for damages for failure to furnish water and sanitation facilities upon termination of Robinson Rancheria.	Answer of defendant filed Dec. 10, 1971. Case remains open.	Received Sept. 22, 1971.
715. Elverna Yevonne Clairmont Baciarelli v. Hickel, USDC, ND, Cal.	Action for judicial review of decision of Assistant Secretary of Interior denying plaintiff membership in the Confederation of Salish and Kootenani Tribes, Flathead Reservation.	Case remains open on appeal to 9th circuit-------	Receivee Oct. 28, 1970.
716. Llewellyn Barrackman, et al. v. John Artichoker, et al, USDC, Ariz.	Action to contest validity of Fort Mojavet ribal election.	Case remains open. Final argument set for hearing on Jan. 18, 1972.	Received Aug. 9, 1971.
717. Leland Blackwolf, Edwin Brady, Raymond Seminole v. Dist. Ct. of 16th Jud. Dist. Mont. et al. Sup. Ct. of Mont.	Request for Justice Department to represent interest of Northern Cheyenne Tribe in suit by O.E.O. to determine status of tribal ordinance providing cooperation with State in juvenile delinquency matters.	Case remains open. Brief on behalf of respondents filed Jan. 11, 1972. No decision has yet been made on request for representation of Indians by United States.	Received Dec. 27, 1971.
718. In the Matter of the Conservatorship of the Estate of Lawrence Joseph Bow. Riverside Co. Supr. Ct., Cal.	Guardianship and conservatorship proceedings involving Agua Caliente Indians.	Case reopened due to pending appeal.	Received May 16, 1968. (See case No. 713, a related case.)

ADDITIONAL CASES INVOLVING INDIAN WATER RIGHTS—Continued

Name of case or claim and court in which filed	Subject	Result or status	Remarks
719. Charles Broken Leg v. Louis Bruce, et al., USDC, S.D.	Action for declaratory and injunctive relief against Secretary of Interior and others for refusing to sell plaintiff interest in restricted Pine Ridge allotment because it is in a land consolidation area.	Case remains open pending outcome of settlement negotiations.	Received Apr. 21, 1971.
720. Re Raymond Buzzard. No court. Okla.	BIA request for action to collect debt against individual Indian and to foreclose his mortgage.	Case remains open as a direct reference matter with collection efforts initiated by U.S. Attorney.	Received Sept. 29, 1971.
721. Della Cooper Campbell v. US, et al., USDC, ND, Cal.	Action to enjoin distribution of assets of Sherwood Valley Rancheria and, in the alternative, to require change of distribution plan to include plaintiffs.	Case remains open. On Apr. 30, 1971 order was entered vacating plaintiffs motion for summary judgment and directing parties to file further documents.	Received June 6, 1969.
722.			
723. Re Choctaw Tribe of Mississippi. No court. Miss.	Request for action to determine that property of Choctaw Housing Authority is tax exempt under Mississippi law.	Case remains open. Complaint has not yet been filed.	Received Nov. 18, 1971.
724. Thomas Cochran, et al. v. Fort Belknap Indian Community, et al., USDC, Mont.	Suit for declaratory judgment, injunction, and damages to establish plantiff's rights in low-cost housing.	Stipulation of settlement and order of dismissal entered Oct. 26, 1971.	
725. Committee to Save Our Fish v. US, et al., USDC, WD, Wash.	Action to enjoin defendants from according Indians fishing rights not enjoyed by non-Indians.	Case remains open. Government has moved to dismiss complaint. Decision pending.	Received Apr. 16, 1971. In a related case in same court same plantiff as here has sued for injunction against fishing on Puyallup Indian Reservation. Case is at interrogatories stage.
726. Re Mary Couture. No court. Wisconsin	Request to cancel restricted fee patent issued in 1894 on Bad River Indian Reservation.	Case remains open. No action contemplated at this time due to age of claim.	Received Aug. 17, 1971.
727. Edith Croy, et al. v. Rogers C. B. Morton, et al., USDC, ED, Cal.	Action for declaration that plaintiffs as nonreservation California Indians are eligible to participate in emergency housing for California rural Indians.	Case remains open. Litigation report requested.	Received Jan. 13, 1972.
728. Lois D. Cullmer v. Innocencio M. Valle, et al., San Diego Co. Supr. Ct., Cal.	Action to enjoin use of access road by Indian tribe	Case remains open awaiting further action by plaintiff.	Received Oct. 20, 1967.
729. Phoebe Wilson Dillion v. Antler Land Co., et al., USDC, Mont.	Action to set aside fee patent and deed to Antler because of fraud and because Antler owned more than statutory acreage limit on the reservation.	Case remains open at pretrial stage	Received July 28, 1970.
730. Charles Edwardsen, et al. v. Rogers C. B. Morton, et al., USDC, D.C.	Action to set aside tentative State selections of north slope lands by Alaska and to require Secretary of Interior to seek accounting from State of Alaska.	Case remains open. Amended complaint filed	Received Oct. 7, 1971.
731. In the Matter of Fort Lewis Tuition. No court. Colorado.	Proposal that Justice Department secure rights of Indians to free tuition at Fort Lewis College, Colorado.	Case remains open. Complaint for declaratory judgment filed.	Received Apr. 19, 1971.
732. Enola E. Freeman v. Rogers C. B. Morton, et al., USDC, D.C.	Action to require employment of Indians at BIA plant Management Engineering Center at Littleton, Colo., before non-Indians are employed.	Case remains open. Answer to amended complaint filed in early January 1972.	Received Feb. 11, 1971.

733. US v. Ed Grush, et al., USDC, C.D. Cal.	Request for action for damages for breach of construction contract entered into by Bank of America, former conservator of an Agua Caliente Indian. Bank as conservator for Indian had entered into construction contract with Grush for work on certain business property held on behalf of Indians.	Case remains open awaiting trial	Received Dec. 8, 1969.
734. US v. Harn Corp., USDC, SD, N.Y.	Action to recover rent accrued on tribal enterprise.	Case remains open. Default judgment entered in November 1969. Defendant corporation has gone into bankruptcy, and efforts continue to collect on the amount awarded in this judgment.	Received Sept. 14, 1966.
735. Dewey Healing, Chairman of Hopi Tribal Council v. Paul Jones, Chairman of Navajo Tribal Council, et al. USDC, Ariz.	Action to establish rights of Hopi and Navajo Tribes under 1882 Executive Order Reservation.	At issue is control of certain land held in common between Navajo and Hopi Tribes. Government position is that it holds title as stakeholder. Hopi tribe seeks to have individual Navajo members removed from common land or have them pay rent. This action was filed in March 1970, and reopened litigation involving the same subject matter previously ruled upon by special 3-judge court in 1963.	
736.			
737. Myrtle S. Heim v. Narcisse Nicholson, et al., USDC, ED, Wash.	Action for decree directing Colville Business Council to enroll plaintiff.	Case remains open. On Nov. 30, 1971, order entered dismissing action.	Received Feb. 28, 1971.
738. A.A. Hopkins-Duke v. US, et al., USDC, Ariz.	Action for public domain allotment in Arizona and for 3-judge panel to declare Multiple Use Act unconstitutional.	Case remains open. In Nov. 1971, Government filed supplemental memo in support of its motion to dismiss. Nov. 23, 1971 court ruled in favor of dismissal.	Received Sept. 13, 1971. This action was contemporaneous with another suit to enjoin BLM officials from interfering with plaintiffs occupancy of land claimed as Indian allotment. That suit was similarly dismissed.
739. Dallas E. Howard v. Fort Belknap Indian Community Council. USDC, Mont.	Action to enforce priority of right to employment of Fort Belknap Tribe.	Case remains open. Petition filed Aug. 13, 1971. At present, attorney for tribe is representing defendant. Justice Department is monitoring case.	Received Aug. 13, 1971.
740. State of Idaho v. Gerald Cleo Tinno. USDC, Idaho.	Criminal action against Indian from Fort Hall Reservation for fishing contrary to State law.	Case remains open. United States filed amicus curiae brief before Supreme Court of Idaho. Decision has not yet been handed down by court.	Received Mar. 25, 1970.
741. Richard Janson, et al. v. Rogers C.B. Morton, et al., USDC, Alaska.	Action to set aside tentative State selection in Tlingit-Haida area.	New case. Complaint filed Dec. 16, 1971. Litigation report requested from Department of Interior.	Received Dec. 29, 1971.
742. James Jim, et al. v. State of Utah, et al., USDC, Utah.	Class action to declare unconstitutional 1968 amendment to 1933 Act regarding extension to Navaho Reservation and for an accounting by State board of Indian Affairs.	Case remains open. United States has intervened to defend constitutionality of statute. Matter is still in pretrial stage.	Received Mar. 24, 1970.
743. Kenneth M. Kale v. US, et al., USDC, CD, Cal.	Action for Indian allotment in national forest and to enjoin State court proceeding.	Case remains open on appeal to 9th Circuit where it has been assigned for hearing Mar. 1, 1972.	Received Apr. 7, 1969.
744. US v. Kiowa Reservoir Tract. USDC, ED, Okla.	Quiet title action covering Choctaw-Chickasaw tract.	Case remains open. Complaint filed Dec. 29, 1971.	Received Jan. 7, 1970.
745. Kate LeClair v. John N. Mitchell, et al., USDC, S.D.	Action for mandamus to compel Attorney General and others to contest validity of State road across Rosebud Indian allotment.	Case remains open awaiting trial	Received Mar. 29, 1971.
746. US v. Minnesota. Leech Lake Band of Chippewa Indians, et al. v. Jarle Leirfallom, et al., USDC, Minn.	Action for declaratory judgment and injunction protecting treaty rights to hunt, fish, gather wild rice without interference by State officials.	Case remains open. Judgment for plaintiffs entered Jan. 17, 1972.	Received Sept. 24, 1969. If not appealed, case may be closed.

ADDITIONAL CASES INVOLVING INDIAN WATER RIGHTS—Continued

Name of case or claim and court in which filed	Subject	Result or status	Remarks
747. Norman M. Littell v. Sec. of Int. USDC, Md.	Action to require payment of amount alleged due plaintiff under attorney contract with Navaho Tribe ($2,500,000).	Case remains open. Plaintiff appealed dismissal of original complaint to 4th Circuit which on Dec. 3, 1971 reversed and remanded case to district court for further proceedings. Matter now awaits hearing in district court.	Received Oct. 18, 1968. See earlier closed cases noted above involving same general subject matter.
748. Clarence A. Lomas v. Sec. of Agri., et al., USDC, CD, Cal.	Action against contractor, United States, and Farmers Home Administration, for injunction and damages resulting from faulty construction on mortgaged property.	Stipulation of settlement filed Nov. 18, 1971. Case may be closed at any time.	Received Mar. 2, 1970.
749. Starlie Lomayaktewa, et al. v. Rogers C. B. Morton, et al., USDC, D.C.	Action to cancel coal lease on Black Mesa and to revoke approval of construction and operation contract with Peabody Coal Co. on Four Corners Power Plant.	Case remains open. There have been numerous intervenors on defendant side. Order transferring litigation to Federal district court for Arizona has been appealed by plaintiff to D.C. Circuit.	Received May 21, 1971.
750. Lorraine Loncassion, et al. v. Leekity & the Pueblo of Zuni, USDC, N.M.	Request that Justice Department continue surveillance of case of Zuni Pueblo and individual policeman arising out of claim of alleged illegal actions of policeman.	Tribe's motion to dismiss was denied and case is in pretrial stage. United States is monitoring suit as observer.	Received July 20, 1971.
751. John M. Loughrey v. US, USDC, WD, Wash.	Action by Indian to enjoin distribution of Indian estate and to require Secretary of Interior to approve deed to plaintiff.	Judgment affirming decision of Secretary of Interior and dismissing complaint entered Dec. 13, 1971. Case may be closed if not appealed.	Received May 29, 1969.
752. James MacKay, et al. v. Lummi Business Council et al. USDC, WD, Wash.	Action to enjoin Lummi Business Council from conducting tribal business in violation of requirements of tribal constitution.	New case. Complaint and summons filed in January 1972.	Received Jan. 20, 1972.
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754. Rodney T. Matthews v. Sec. of Agri., et al., USDC, CD, Cal.	Action for damages, injunctive relief and declaratory judgment for failure of Farmers Home Administration to carry out implied warranties arising out of loan.	Stipulation for compromise settlement entered Nov. 17, 1971. Case may be closed at any time.	Received Jan. 30, 1970.
755. Mescalero Apache Tribe v. State of New Mexico Pending before Sup. Ct.	Request that Justice Department file amicus curiae brief on question of taxation of Indian interest in ski resort under permit from Forest Service.	Tribe's petition for certiorari was filed Dec. 4, 1971. Supporting memo filed by Solicitor General as amicus curiae.	Received Dec. 23, 1971.
756. Donald E. Miller v. US, et al. USDC, ND, Cal.	Suit by Indian for allotment in Six Rivers National Forest, Calif.	Case remains open awaiting trial	Received Nov. 6, 1970.
757. US v. Minnesota. USDC, Minn.	See No. 746 above	See No. 746 above	See No. 746 above.
758. State of Minnesota v. Angus Clark, USDC, Minn.	Request that Justice Department represent Indian charged with illegal possession of deer on White Earth Indian Reservation.	Motion to dismiss filed by defendant is under advisement by court. Case remains open. Dismissal entered Feb. 1, 1972.	Received Mar. 12, 1971.
759. Muckleshoot Indian Tribe v. General Services Administration et al., USDC, WD, Wash.	Action by tribe to force GSA to transfer to tribe 3 tracts of surplus property.	Case remains open pending negotiations	Received Nov. 10, 1970.

760. Re Tony Zager. No court. Oklahoma	Request for action to quiet title to Choctaw–Chickasaw land.	Case remains open. This is 1 of 3 cases involving alleged unlawful use and occupancy of tribal tracts by prospective defendant Zager. Matter is under review by Department of Interior for a determination as to whether litigation is necessary.	Receved January 15, 1965.
761. National Indian Youth Council, et al. v. Louis R. Bruce, et al., USDC, Utah.	Action to require Inter-Mountain Indian school to cease illegal activities and to require closing of school and opening of legal school of Navaho Indian Reservations.	Government filed motion to dismiss which has not been argued.	Received May 19, 1971.
762. National Indian Youth Council, et al. v. Rogers Morton, et al., WD, Oklahoma.	Action to enjoin defendants from expelling students from Indian schools without due process.	United States has not yet responded	Received December 29, 1971.
763. Navaho Tribe of Ind. v. Westward Mfg. Co., et al. v. Raymond Nakai, et al., USDC, Ariz.	Action by Navaho Tribe to rescind agreement to establish business on Navaho Reservation, to rescind stock purchase and mortgage and for damages.	Federal defendants were added to suit in 3d-party complaint which 3d-party complaint was stricken and the Federal defendants were dismissed.	Received July 28, 1971 Action is still being prosecuted in absence of Federal defendant.
764. City of New Town v. US and Sec. of Int. USDC., N.D.	Suit for declaratory judgment to determine boundary of Fort Berthold Indian Reservation.	Judgment was entered on behalf of Federal defendants and tribes and against plaintiff in district Court, which was affirmed on appeal to 8th Circuit on January 17, 1972.	Received May 18, 1970. The United States has not been advised whether plaintiff will petition for certiorari to Supreme Court.
765. Norvell v. Sangre de Criston Dev. Co., Inc. USDC, N.M.	Action for declaratory judgment that State of New Mexico has jurisdiction to control developments, zoning, etc., on Pueblo of Tesuque.	Federal defendant added by amended complaint served on Secretary of Interior on January 10, 1972, and no answer has yet been filed.	Received September 24, 1971.
766. Erwin Otrodovec v. First Wis. Trust Co. of Milwaukee, et al., C.A. 7.	Notice of constitutional question relating to trust set up for minor Menominee Indians.	No decision made to intervene in matter or file brief in Court of Appeals.	Received June 3, 1971. United States did not participate in the action at the District Court level, and was involved in appeal only because constitutional question was raised.
767. US v. Colen Petersen, ED, Wash	Action to collect delinquent rentals against a lessee of Indian allotted lands within the Fort Hall Indian Reservation and to recover damages for breach of contract under lease.	Case set for trial	Received Apr. 22, 1969. Extensive settlement negotiations have occurred, but no settlement was consumated as result thereof.
768. Barbara Pinnow, et al. v. Walter J. Hickel, et al., USDC, Wyo.	Action against Secretary of Interior and tribal officials for enrollment with Shoshone Tribe.	District Court granted defendant motions for summary judgment and to dismiss. 10th circuit affirmed judgment.	Received Oct. 24, 1969. Action was filed under so-called Indian bill of rights, but court ruled no jurisdiction was granted to Federal Courts by that legislation to cover a dispute such as the one at issue.
769. Pitt River Indian Tribe, et al. v. Walter J. Hickel, ED, Cal.	Action to enjoin termination of ranch reservation until a public hearing is held.	Termination is enjoined on preliminary injunction pending disposition of case.	Received July 11, 1970.
770. Quinault Allottees Assn., et al. v. US, C. Cls.	Action to recover deductions for administrative costs of timber sales on allotted lands.	Case has just been designated class action and returned by full court to trial commissioner for further proceedings.	Received Mar. 19, 1971.
771. Anita Reyos v. First Security Bank of Utah, et al., USDC, Utah.	Action by mixed-blood Utes to recover losses resulting from transfer of capital stock in Ute Development Corp.	District Court awarded plaintiff judgment; judgment reversed by 10th circuit case has been argued before Superior Court and has not yet been decided.	Received Feb. 23, 1966.
772. Elizabeth Ricky v. Co. of Riverside, et al., CD, Cal.	Action to enjoin enforcement of Riverside County's zoning laws on Pechango allotted lands.	District Court awarded judgment in favor of County of Riverside, but enjoined county from enforcing ordinances against plaintiff's land.	Received May 25, 1971. No Federal parties involved in this action, but instead United States filed on action against County of Riverside. No appeal taken.
773. US v. C. J. Riley, County Assessor, et al., ED, Okla.	Action to cancel patent to cemetery site of Chickasaw-Choctaw nations.	Amend complaint filed Jan. 13, 1972	Received Feb. 25, 1969.
774. US v. County of Riverside, et al	Same as Case No. 772	Same as Case No. 772	Received June 10, 1971. No appeal taken.

ADDITIONAL CASES INVOLVING INDIAN WATER RIGHTS—Continued

Name of case or claim and court in which filed	Subject	Result or status	Remarks
775. John Rockbridge, et al. v. Rogers C. B. Morton, et al., USDC, Ariz.	Action against Secretary of Interior, etc., to acquire promulgation of regulations to govern Indian traders on Navajo Reservation, to enforce existing regulations, etc.	District Court granted defendant motion to dismiss which judgment was reversed by 9th circuit Oct. 6, 1971, and remanded to District Court. Case is now in pretrial stages.	Received Sept. 8, 1969.
776. Oneta Lamb Robedeaux, et al. v. Sec. of Int. WD, Okla.	Action to review action of Secretary of Interior approving will of Otoe Indian.	United States has filed answer	Received Oct. 18, 1971.
777. Clara Roubideaux v. Louis R. Bruce, et al. USDC, S.D.	Action to require Secretary of Interior to process plaintiff's application for sale of allotted land at Pine Ridge, S.Dak., without regard to heirship consolidation area and preference rights of tribe.	Case is in pretrial stages	Received Feb. 18, 1971.
778. Romon and Nita Ruiz v. Stewart L. Udall USDC, Ariz.	Action against Secretary of Interior to order defendant to complete proceedings for public assistance benefits and to set aside BIA requirement that a recipient of benefits must reside on reservation.	District Court granted defendant's motion for summary judgment and case is now pending in 9th circuit.	Received Feb. 23, 1968.
779. Martin J. Sampson v. U.S., WD, Wash	Action by Indian for allotment of lands between surveyed and allotted lands in the Skagit River.	United States has filed answer	Received Aug. 27, 1971.
780. Sangre de Cristo Dev. Co., Inc. v. City of Santa Fe, et al., USDC, N.M.	Action against city and State officials over commercial development on Tesuque Pueblo near Santa Fe.	United States not party to this action and filed separate action.	Received July 6, 1971.
781. Sessions, Inc. v. Rogers C. B. Morton, et al., CD, Cal.	Action for declaratory judgment that termination of plaintiff's lease on allotted lands is contrary to law and for injunction.	Case is in pretrial stages and settlement discussions are taking place in attempt to resolve problems out of court.	Received Feb. 22, 1971.
782. Alvin Settler v. Lameer, et al., ED, Wash	Request that Justice Department file brief amicus curiae supporting control of Yakima Tribe over off-reservation fishing.	Brief amicus filed by Government on behalf of Indians.	Received Sept. 17, 1970.
783. William T. Shaw and Richard E. Shaw v. Sec. of Int., et al., USDC, Monta.	Action for judicial review disapproving in part and approving in part the will of a Crow Indian.	Parties currently working on briefs to file in court for submission of dispute.	Received Aug. 9, 1971.
784. Simons, et al. v. US, ND, Texas	Action for an accounting of judgment for $3,000,000 for value of oil taken from accretions to Red River bed lands.	District court denied plaintiff motion for leave to file amendment and on appeal to 5th Circuit that judgment was reversed and remanded. After various pretrial motions were filed, a 3d-party complaint was filed and extensive settlement negotiations were conducted. At the present time a settlement offer is being considered by United States.	Received June 22, 1967.
785. Sarah Jean Chamberlain Slattery, et al. v. The Arapahoe Tribe of Indians, et al., USDC, Wyo.	Action for enrollment with Arapahoe Tribe of Indians of less than ¼ blood.	United States motions for summary judgments and to dismiss were granted and district court opinion was affirmed by 10th Circuit.	Received Nov. 3, 1969. This case is companion case to Pinnow and was filed under so-called Indian Bill of Rights. Courts have determined that the legislation did not confer jurisdiction on Federal courts to adjudicate disputes concerned herein.
786. Glen E. Snow Bird v. McClung, et al., USDC, N.D.	Action by inmate of Federal penitentiary of Sandstone, Minn., an Indian, for an accounting of his agency account.	Judgment entered by district court dismissing complaint with prejudice and 8th Circuit affirmed opinion of district court on basis of district court memo and order.	Received Jan. 29, 1968.

787. Harry A. Spake v. Wapato, et al., ED, Wash.	Action against individual Indians for failure to approve general development plan for leased premises.	Defense motion to dismiss set for February 1972	Received Nov. 15, 1971.
788. Grace R. Sparkman v. Clifford M. Hardin, CD, Cal.	Action for breach of contract to construct home for plaintiff and for injunction requiring Secretary of Agriculture and others to enforce housing standards and for damages.	Stipulation filed Dec. 30, 1971, for dismissal with prejudice and without costs.	Received Jan. 29, 1970.
789. Sycamore Valley Assn. et al. v. Southern California Edison Co. et al. ED, Cal.	Action for damages for granting power line easement across Cool Springs Rancheria.	Defendant (who included commissioner of FPC) filed a motion to dismiss which was granted on June 17, 1971. Case is on appeal to 9th circuit.	Received Feb. 10, 1971.
790. Cornell Tahdooahnippah et al. v. Thimmig, et al., USDC, Colo.	Action to require free tuition for all Indian students not residing in Colorado and Colorado students not in financial need attending Fort Lewis College, Colo.	Defendants have answered and case in pretrial stages.	Received Aug. 3, 1971. There are no Federal defendants to this action. This dispute is related to case in this index identified as Fort Lewis College, Colo.
791. Bert Taunah, et al. v. Stewart L. Udall, WD OKLA.	Action to require Secretary of Interior to give effect to or approve a family settlement agreement involving the estate of a deceased Comanche Indian.	Settlement was reached when approved on May 20, 1971 by Assistant Secretary of Interior and action was mooted.	Received Mar. 19, 1965. Action was before 10th circuit at time of settlement.
792. Leroy and Selfia Towersap v. Ft. Hall Tribal Court, et al., USDC, Idaho.	Action to require tribal court to permit accused to be represented by counsel and for protection of other constitutional rights.	United States has appeared as amicus curiae in case, but no adjudication has been obtained therein.	Received Feb. 1, 1971.
793. Eugene R. Trust v. US, USDC, S.D.	Action for just compensation for allotted land taken for Big Bend Dam and Reservoir and for loss of cabin.	Negotiations are under way and case appears to have been settled although final approval has not yet been obtained.	Received Aug. 14, 1969.
794. US v. Venride, Inc., SD. N.Y.	Action to obtain repayment of $450,000 loan intended to set up tribal enterprise.	Action settled upon offer of defendant to make payment in part, which settlement was approved on Mar. 11, 1966 by Attorney General.	Received Sept. 7, 1965. Defendant are currently making payments on settlement compromise as agreed to.
795. Charlie Ward, et al. v. President Richard M. Nixon and Sec. of Int., USDC, D.C.	Action to question validity of appointment by president of principal chief of Muscogee Creek nation.	Action was dismissed as to President Nixon, and defendant has moved to dismiss as to Secretary of Interior.	Received Nov. 18, 1971.
[illegible] Erwin Ware, et al. v. Elliott Richardson and Rogers Morton, et al., WD, Okla.	Action to declare unconstitutional the Federal housing program as administered on Indian reservations.	United States has not yet answered, but order denying plaintiff request for 3-judge court was entered.	Received Jan. 5, 1972.
St. of Wash. v. Alvin S. Penn (Hoh Indian) WD, Wash.	Request that United States represent Indians with respect to treaty rights to fish at usual and accustomed places.	Action has been postponed indefinitely pending outcome of United States v. State of Washington (see case No. 798).	Received Mar. 20, 1970.
[illegible] US v. State of Wash., WD, Wash	Action against State of Washington to establish treaty right of Indian tribes to fish at off-reservation locations.	Action is pending during pretrial deliberations and preparations.	Received Apr 30, 1970.
799. Wash. St. Sportsmen Council, Inc. v. Thor C. Tollefson, et al., WD, Wash.	Action by Sportsmen Council to enjoin State from creating exclusive treaty fishing areas for Indians. (Filed in State court of Washington.)	United States has been permitted to participate as amicus curiae, and case is postponed pending outcome of United States v. Washington (case No. 798).	Received June 2, 1970.
800. H. Reed Wasson, et al. v. John Gray, et al. USDC, N.M.	Request that Justice Department represent Zuni law officer in litigation with OEO representative.	No action taken in this matter as of this date	Received Dec. 13, 1971.
801. Ernest L. Wilkinson, et al. v. Walter J. Hickel, et al., USDC, D.C.	Action by attorneys for declaratory judgment and order awarding attorneys' fees for obtaining tax refunds for Osage Indians who had no contracts with plaintiffs.	Defense motion to dismiss was denied and case is in pretrial stages.	Received Jan. 5, 1970.
802. Clarence A. Wilson, et al. v. Rogers C.B. Morton, et al., USDC, S.D.	Action to require that allotted dower land be sold at public auction and for protection of civil rights of plaintiffs.	Court has motions to dismiss under advisement	Received Feb. 16, 1971.

ADDITIONAL CASES INVOLVING INDIAN WATER RIGHTS—Continued

Name of case or claim and court in which filed	Subject	Result or status	Remarks
803. Emma Yazzie, et al. v. Rogers C. B. Morton and Elliott L. Richardson, USDC, Ariz.	Action by Navaho Indians to cancel coal lease on the Black Mesa and revoke approval of contract with Peabody Coal Co. for construction and operation of Four Corners Power Plant.	Federal defendants have filed answers; numerous defendant-intervenors are now in the litigation, many of whom are power companies; and a number of motions to dismiss are pending in the court filed on behalf of the various defendants.	Received May 24, 1971. This action is 1 of several actions pending in various Federal courts concerning the Four Corners Power Plant.
804. US v. Richard C. Nowell and US Fidelity and Guaranty Co., USDC, Ariz.	Action to enforce provisions of Indian agricultural lease and to recover delinquent rentals.	Action has been bogged down in numerous pretrial maneuverings; and pretrial conference is now scheduled for May 1972.	Received Jan. 9, 1962.
805. Edward J. & Lillie Simon, et al. v. Jerry Vinson & A. P. Clark, et al., USDC, ND, Texas.	Action to quiet title to and for an accounting for oil produced on land underlying the Red River as well as land accreted to public, and Indian, land.	Judgment dismissing suit with prejudice affirmed on appeal to 5th Circuit United States was one of defendants.	Received Sept. 27, 1966; closed June 17, 1968. Certiorari denied by Supreme Court.
806. In the Matter of Ralph and Ira Simon. No court, Kansas.	Request by tribal official to recover tribal land and rent due under lease.	Matter was determined to be improper as a direct reference case. Since no formal request was received from Department of Interior, Justice Department closed its file on case.	Received Sept. 16, 1966; closed Dec. 13, 1966.
807. Edmund Peter Siva v. Supr. Ct. of Cal. & Frank Bogert. 4th Dist. Ct. of App. Cal.	Action to prevent payment of conservator's fee from estate of Palm Springs Indian.	United States was not a defendant, and matter was returned to Supreme Court.	Received Nov. 9, 1965; closed Jan. 21, 1966.
808. Charles B. Smith and William J. Milner v. US, USDC, WD, Wisc.	Action for just compensation for land taken for Federal project.	Case disposed of by compromise. Plaintiff accepted $5,100 as payment of claim in full.	Received April 23, 1969; closed Jan. 30, 1970.
809. Clifton Smith v. Udall, USDC, Ore	Action to set aside determinations of incompetency under Klamath Termination Act.	Case dismissed on stipulation of parties	Received July 11, 1961; closed Apr. 25, 1962.
810. In the Matter of J. W. Smith. No court, Mont.	Request for action to collect operation and maintenance charges on Blackfoot Irrigation project.	Case disposed of by payment of claim in full ($1,296).	Received Sept. 14, 1965; closed May 18, 1966.
811. US v. Joseph G. & Adele D. Smith, USDC, ND, Cal.	Action to recover possession of Indian allotment and to establish boundary between certain properties.	Case was consolidated with other similar cases	Received Sept. 26, 1968; closed Jan. 14, 1969.
812. Martha Loutish Smith v. Udall, USDC, SD, Cal.	Action to recover $50,000 for refusal to grant Indian an allotment on public land.	Judgment for defendant dismissing the action	Received Mar. 4, 1965; closed Aug. 6, 1965.
813. In the Matter of Robert W. Smith. No court, Mont.	Action to collect operation and maintenance charges on Blackfoot Irrigation project.	Case disposed of by payment of claim in full ($162).	Received Sept. 14, 1965; closed May 18, 1966.
814. Sam P. Smith v. Supt. of Osage Indian Agency et al., Osage Co. Ct., Okla.	Action involving Osage headright	Case dismissed as to Superintendent of agency	Received Nov. 5, 1964; closed Nov. 23, 1964.
815. US v. Wick & Nancy Smith, USDC, ED, Okla.	Action to quiet title to Choctaw tribal land	Default judgment entered for plaintiff	Received Jan. 7, 1965; closed Jan. 13, 1967.
816. US v. Willis Smith and Herb Pangle, USDC, ED, Okla.	Action to recover possession of Indian allotment and for rent due on lease.	Defendant vacated premises and paid $100 as compromise and settlement of claim.	Received Oct. 25, 1961; closed May 1, 1962.
817. Glenn E. Snow Bird v. James R. Keaton, et al., USDC, N.D.	Motion for order for Superintendent of Indian agency to show cause why he should not offer certain land for sale.	Case dismissed on Government motion	Received Feb. 24, 1970; closed Aug. 7, 1970.
818. Richard and Alec Sohappy v. McKee A. Smith, et al., USDC, Ore.	Action by Yakima Indians to enjoin enforcement of Oregon and Washington fishing regulation which bars fishing at usual and accustomed places.	File was closed after case was consolidated with other related cases noted elsewhere throughout this report.	Received July 31, 1968; closed Mar. 30, 1971.

819. South Caddo County Soil and Water Conservation Dist. v. W. V. Granger, et al., USDC, WD, Okla.	Action for condemnation of Indian land	Case dismissed and independent appraisal was made for land at issue.	Received Feb. 28, 1967; closed Mar. 23, 1967.
820. South Caddo County Soil and Water Conservation Dist. v. US, et al., USDC, WD, Okla.	Condemnation of allotted Indian trust lands	Judgment in amount satisfactory to Department of Interior ($31,110).	Received Aug. 8, 1968; closed Aug. 5, 1969.
821. South Caddo County Soil & Water Conservation Dist. v. US, et al., USDC, WD, Okla.	Condemnation of Indian lands for soil conservation project.	Judgment in amount satisfactory to Department of Interior ($11,650).	Received Apr. 3, 1969; closed Sept. 18, 1969.
822. Southern California Gas Co., et al. v. Riverside County and US, et al., USDC., CD, Cal.	Condemnation of allotted Indian land under 25 U.S.C. 357.	Stipulation for dismissal entered after acceptance by Indian allottee of $3,800 as part of compromise settlement.	Received May 1, 1968; closed Jan. 6, 1970.
823. Thomas & Marlene Spotted Eagle v. The Blackfoot Tribe & Reservation, et al., USDC. Mont.	Action by 2 Blackfoot Indians against tribe, City of Browning, Mont., Secretary of Interior, and others to enjoin or set aside tribal actions allegedly contrary to Civil Rights Act of 1968.	Case dismissed as to Federal defendant. Judgment later entered in favor of other defendant.	Received June 27, 1968; closed Jan. 15, 1970.
824. John W. Spriggs v. US., Sec. of Int., et al., USDC, Wyo.	Action to quiet title to certain lands and for an accounting.	Case dismissed for failure to state a claim upon which relief could be granted. Dismissal affirmed on appeal to 10th circuit.	Received Nov. 12, 1958; closed July 25, 1965.
825. Charles J. Springer v. Alfred Wayne Gilpen, et al., USDC, Neb.	Action by an Omaha Indian for an accounting from tribal council and Secretary of Interior with regard to management fund obtained by judgment of Indian Claims Commissioner.	Case dismissed for lack of jurisdiction	Received Feb. 21, 1968; closed Nov. 18, 1969.
826. Arthur Springer and Clarence White v. Omaha Tribal Housing Auth. Thurston Co. Dist. Ct., Neb.	Action to foreclose mechanics lien against tribal property.	Plaintiffs' claim paid in full without proceeding further with litigation.	Received July 22, 1966; closed Sept. 13, 1966.
827. Re Standing Rock Reservation. No court. S.D.	Proposed action to recover damages to 11/12ths interest in Indian allotment.	Case improperly referred to U.S. Attorney as direct reference case. File closed until formal request received from Department of Interior.	Received Aug. 16, 1966; closed Sept. 16, 1966.
828. Florence Jacob Stanton v. US, USDC, S.D.	Suit to recover additional compensation under Public Law 90–414 for the taking of plaintiff's land for Big Bend Reservoir project.	Claim settled by compromise payment to plaintiff of $3,000.	Received June 5, 1969; closed Mar. 11, 1971.
829. US v. L. R. Stegall, USDC, ND, Tex.	Action to recover rent due on restricted lands	Case disposed of by compromise; payment of $114 on claim of $312.	Received Sept. 5, 1961; closed Oct. 25, 1963.
830. City of Stilwell v. Certain land parcels & Tom Hopper, et al., USDC, ED, Okla.	Action to condemn Indian land	Case disposed of by compromise; payment of $8,500 as full compensation accepted by Indian.	Received June 30, 1964; closed Sept. 21, 1966.
831. Re Clifford Stoltz. No court, Montana	Collection of operation and maintenance charges on Blackfoot irrigation project.	Case disposed of by payment of claim in full ($3,831).	Received Sept. 14, 1965; closed May 18, 1966.
832. Re Louis A. Stoltz. No court, Montana	do.	Case disposed of by payment of claim in full ($263).	Do.
833. Re Ruth Stoltz. No court, Montana	do.	Case disposed of by payment of claim in full ($211).	Do.
834. City of Stroud v. Katie John Crowles, et al., USDC, ND, Okla.	Condemnation of Indian land	Judgment in amount satisfactory to Department of Interior ($15,779).	Received Dec. 29, 1966; closed Mar. 10, 1967.
835. City of Stroud v. Woodrow Wilson Wattie, USDC, ND, Okla.	do.	Judgment in amount satisfactory to Interior ($11,397.15).	Received Jan. 26, 1967; closed Oct. 12, 1967.
836. City of Stroud v. US, et al. Creek Co. Dist. Ct., Okla.	Condemnation of former restricted land	Case dismissed as to Federal defendant	Received Sept. 22, 1967; closed Nov. 15, 1967.
837. US v. William F. Stucky, USDC, ND, Cal	Action to cancel fee patent to allotted Indian land in order to clear Indian title because purchaser declined to complete sale.	Judgment entered for plaintiff	Received Nov. 18, 1965; closed Mar. 23, 1966.
838. Sunny Valley Citrus, Inc. v. Adrian Fisher, et al., USDC, Ariz.	Action against Indian Superintendent, tribal officials, and others to enjoin them from interfering with plaintiffs rights under a 40-year agricultural lease.	Case dismissed with prejudice by District Court. Appeal dismissed without prejudice by stipulation of parties.	Received Sept. 25, 1969; closed Sept. 11, 1970.

ADDITIONAL CASES INVOLVING INDIAN WATER RIGHTS—Continued

Name of case or claim and court in which filed	Subject	Result or status	Remarks
839. Sunray DX Oil Co. v. Sec. of Int., et al., USDC, WD, Okla.	Action to enjoin oil and gas leasing on Indian lands.	Case dismissed on Government motion	Received Oct. 31, 1967; closed Jan. 25, 1968.
840. Superior Oil Co., et al. v. Area Director for BIA, USDC, Alaska.	Action to enjoin issuance of oil and gas leases on Tyonek Indian lands.	Case eventually dismissed on grounds of mootness after preliminary injunction initially granted.	Received Apr. 4, 1963; closed May 14, 1963.
841. Superior Oil C. v. US, et al., USDC, Ariz	Action to enjoin interference with plaintiff's right to carry on mineral exploration within boundaries of Hopi Reservation.	Case dismissed on jurisdictional grounds. Dismissal affirmed on appeal to 9th circuit.	
842. In the Matter of Archie Foster Taggert. Marion Co. Cir. Ct., Ore.	Action to review determination under Klamath Termination Act.	Case voluntarily withdrawn on plaintiff's motion	Received July 17, 1961; closed June 6, 1962.
843. Re Allen Tahkeal. Wasco Co. Supr. Ct. Ore.	Request that Department of Justice represent Yakima Indian arrested for fishing in violation of State law.	Decision was made not to represent Indian after it was learned that he also was in violation of tribal fishing regulation.	Received May 24, 1966; closed Aug. 19, 1966.
844. Tahquitz Development Enterprises, Inc. v. Leonard M. Hill, et al., USDC, SD, Cal.	Action to enjoin Indian officials from terminating Palm Springs lease.	Case disposed of by compromise. Delinquest rent of $21,434 was considered paid in full by receipt of $10,713. Case was then dismissed with prejudice and leases were canceled.	Received Dec. 8, 1965; closed July 29, 1966.
845. Re James G. Tanewasha. Sup. Ct. of Wash	Request for Government to represent Yakima Indian arrested for fishing violation of State law.	Judgment dismissing action against Indian in lower court was affirmed on appeal to State Supreme Court.	Received May 24, 1966; closed Aug. 20, 1968.
846. Viola Atewooftakewa (Tate) v. Udall, USDC, WD, Okla.	Action to set aside order of Secretary of Interior disapproving Indian will.	In district court the decision of Secretary was reviewed and court held will in question was valid. On appeal to 10th Circuit, decision of lower court was reversed on ground that decision of Secretary was unreviewable. The Supreme Court granted certiorari certificate; court ultimately reversed decision by 10th Circuit and reinstated the decision of district court. At the Supreme Court level the case was known as Tooahnippah v. Hickel. It since has become the leading case in the area of Indian probate law. See 397, U.S. 598 (1970).	Received Sept. 7, 1967; closed May 22, 1970.
847. Re State of Texas. No court, Tex	Claim by Cherokee Tribe against State of Texas	No action taken by Government. Department of Interior decided not to act in the case.	Received July 16, 1964; closed Oct. 6, 1964.
848. J.R. & Betty Jane Thomas v. R. H. Hill, et al., USDC, ED, Okla.	Action to quiet title to tract of land in member of Five Civilized Tribes.	Judgment entered for plaintiff. (Judgment corrected error in legal description of plaintiff's property.)	Received Aug. 20, 1963; closed Mar. 19, 1964.
849. In the Matter of Alton Thompson, USDC, Ore.	Action to set aside determination as to competency made by Secretary of Interior under Klamath Termination Act.	Case dismissed on Government motion	Received July 26, 1961; closed June 6, 1962. Thompson was found to be partially paralyzed and nearly blind as a result of wounds received in a stabbing incident. There was no indication that his condition was likely to improve.
850. US, et al. v. Bert Thompson, et al., USDC, Colo.	Action to establish ownership in Indian heirs of minerals (oil and gas) claimed to have been reserved in approval deed to a 3d party.	Judgment on merits for plaintiff	Received Sept. 24, 1962; closed Oct. 12, 1964.

851. Re James Thompson. No court, Okla	Proposed action to put purchaser of Indian allotment in possession and to eject trespasser.	Thompson vacated property, and request for action against him was withdrawn. Purchaser took possession.	Received Dec. 3, 1964; closed Dec. 11. 1964.
852. Lelon Thorn, et al. v. W. A. Villines, et al. Seminole Co. Dist. Ct., Okla.	Action to quiet title to land involving Five Tribes Indians.	None of Indians involved was found to have an enforceable interest, and decision was made by Department of Interior not to remove the case to Federal District Court. United States filed a disclaimer of interest.	Received Mar. 22, 1967; closed May 12, 1967.
853. J. R. Thornton, et al. v. E. A. Donevan, et al. Mayes Co. Dist. Ct., Okla.	Action to quiet title to land involving Five Tribes Indians.	United States filed disclaimer of interest for same reasons outlined in case above.	Received Mar. 3, 1964; closed Aug. 21, 1964.
854. Otto Thunder v. Sec. of Int., et al., USDC, Minn.	Action to recover $3,000 damages for alleged wrongful removal of tribal officer.	Case dismissed on jurisdictional grounds	Received Mar. 20, 1964; closed Dec. 8, 1964.
855. Robert Joe Tiger, et al. v. Louis Tiger, et al., Creek Co. Dist. Ct., Okla.	Action to determine heirs and to partition land of a Creek Indian.	Plaintiff voluntarily dismissed complaint as to U.S. defendant. File closed since no U.S. interests involved.	Received Mar. 31, 1970; closed Mar. 26, 1971.
856. Marcia Lee Tobey v. Udall, USDC, Ore	Action to set aside determination of incompetency under Klamath Termination Act.	Memo opinion entered sustaining determination by Secretary that plaintiff was in need of assistance. Judgment for defendant.	Received July 5, 1961; closed May 22, 1962.
857. Transok Pipeline Co. v. Caddo Co., St. of Okla, US, et al., USDC, WD, Okla.	Action to condemn for pipeline right of way land held under Apache Indian allotment.	Judgment in amount satisfactory to Department of Interior ($530).	Received May 7, 1970; closed Mar. 31, 1971. 1 of 2 cases involving condemnation actions by Transok in 1970. The other was also settled by satisfactory judgment ($993).
858. In the Matter of Paula Throughtmanz. No ct. N.C.	Proposed action to eject former lessee of Indian land.	File closed after no formal request was made by Department of Interior that Department of Justice act in matter. Case was apparently settled at local level by Superintendent of Indian agency.	Received Oct. 18, 1965; closed Apr. 28, 1966.
859. Re Clifford Tulee. Sup. Ct. of Wash	Request that Justice Department represents Yakima Indian arrested for fishing in violation of State law.	Judgment dismissing action against Indian in lower court was affirmed on appeal to State Supreme Court.	Received May 24, 1966; closed Aug. 20, 1968.
860. City of Tulsa v. Margaret Humanstriker Step, et al., USDC, ND, Okla.	Action to condemn Indian land	Judgment in amount satisfactory to Department of Interior. ($2,000)	Received Dec. 9, 1966; closed Sept. 14, 1967. 1 of 4 condemnation actions involving city of Tulsa during same period. Other 3 also were settled by satisfactory judgments ($8,500; $8,500; $17,000).
861. Andrew Turcotte v. August Belgrade, et al., USDC, N.D.	Action to enjoin Indian Superintendent and tribal council from preventing plantiff to take office as chairman.	Case dismissed on Government motion	Received July 8, 1964; closed May 3, 1967.
862. Twin Cities Chippewa Tribal Council, et al. v. Minnesota Chippewa Tribe and Sec. of Int., USDC, Minn.	Action to set aside results of tribal election, to obtain hearing on administrative appeal, and to require holding of valid election after adequate notice.	Summary judgment for defendant affirmed on appeal to 8th circuit.	Received May 21, 1964; closed May 3, 1967.
863. Native Village of Tyonek v. US, et al., Supr. Ct. of Alaska. Later removed to USDC, Alaska.	Action by native Alaskans to collect damages for breach of contract to furnish electricity. United States named as involuntary plaintiff and similar claim asserted.	Motion by United States to dismiss as to United States and remand to State Court granted.	Received July 9, 1969; closed Jan. 15, 1970.
864. Native Village of Tyonek v. Area Dir. for BIA, USDC, Alaska.	Action to enjoin Secretary of Interior from issuing oil and gas leases except under Tribal Leasing Act.	Case dismissed on Government motion. Dismissal was without prejudice. Issues had been mooted.	Received Apr. 4, 1963; closed Oct. 21, 1963.
865. Re Uintah and Ouray Indian Agency. No court, Utah.	Administrative proceedings before State engineer affecting Uintah and Ouray Reservoir.	File closed since no action required by Justice Department.	Received Nov. 4, 1964; closed June 30, 1966.
866. Re Union Pacific Railroad. No court, Ore	Action to recover $4,260 fire suppression costs for damages to Indian forest lands.	Case disposed of by collection of $3,206 as compromise of claim.	Received Feb. 23, 1966; closed June 29, 1966.

ADDITIONAL CASES INVOLVING INDIAN WATER RIGHTS—Continued

Name of case or claim and court in which filed	Subject	Result or status	Remarks
867. Re Union Pacific Railroad. No ct. Idaho	Proposed wrongful death action against railroad resulting from train-automobile accident on Fort Hall Reservation.	Matter was presented to U.S. Attorney. Case was placed in abeyance pending formal request for action from Interior.	Received Aug. 14, 1964; closed Jan. 4, 1965.
868. Unit Structures, Inc. v. Maryland Casualty Co. v. Seminole Tribes of Florida, Inc., USDC, SD, Fla.	Garnishment of bank funds of organized Indian tribal corporation.	United States filed representation of interest in Federal district court and amicus curiae brief with 5th circuit. Order dismissing garnishment proceedings affirmed on appeal. Certiorari denied by Supreme Court.	Received May 28, 1964; closed Feb. 28, 1967
869. In the Matter of Vernon Unive. Klamath Co. Cir. Ct., Ore.	Action to set aside determination as to competency made under Klamath Termination Act.	Case dismissed voluntarily by plaintiff	Received Aug. 16, 1961; closed Feb. 18, 1964.
870. Re Upper Skagit Tribe of Indians. No court. Wash.	Possible action to protect fishing rights of tribes under treaty providing for off-reservation fishing.	Department of Interior recommended against commencing legal action at the time.	Received Oct. 26, 1962; closed Apr. 11, 1963.
871. Re John Uresk. No court. Utah	Action to recover delinquent operation and maintenance assessments on land in Uintah irrigation project.	Case disposed of by payment of claim in full ($181).	Received Jan. 20, 1974; closed Sept. 8, 1964.
872. US v. State of Utah. USDC, Utah	Action to quite title to portions of Green River bed	After 9 years of negotiations involving relatively complex issues of water rights, oil and gas leases, national monument boundaries and other matters, a stipulation of settlement was entered and judgment was made on that basis. Case essentially was resolved by compromise.	Received Nov. 23, 1956; closed Feb. 3, 1967. Subsequent to settlement arrangement, other parties attempted intervention, which prolonged case for 2 more years before final closing. Issue of navigability of river was central to case.
873. US v. State of Utah. USDC, Utah	Action to quite title to bed of San Juan River	This and case above were related and involved several similar issues. However, in this case, there was a judgment generally in favor of United States entered by Federal District Court. Judgment was affirmed on appeal to 10th circuit.	Received Mar. 15, 1957; closed Oct. 24, 1968.
874. Re State of Utah. No court. Utah	Proposed action to quite title to the bed of Colorado River above Castle Creek in United States on basis of nonnavigability of river in that area.	File closed while Department of Interior reviewed its records to determine whether it desired to request that legal action be taken.	Received Jan. 11, 1965; closed Dec. 19, 1968.
875. Eunice Lucero Vaile v. Udall, USDC, WD, Wash.	Action to vacate an order reopening probate of a restricted Indian estate.	Summary judgment entered for defendant	Received July 27, 1966; closed June 12, 1967.
876. Valley National Bank of Ariz. v. Parker Textile Mills, et al. USDC, Ariz.	Foreclosure action involving land on which Small Business Administration has junior mortgage and Indian tribe holds lease.	Complaint dismissed as to Indian defendant and transferred to Civil Division Justice Department for further action in regard to non-Indian Federal defendant.	Received Feb. 15, 1966; closed Feb. 27, 1967.
877. Re Carl Van Tassel. No court, Utah	Collection of operation and maintenance charges on Indian irrigation project.	Case disposed of by payment of claim in full ($444)	Received July 21, 1964; closed Oct. 9, 1964.
878. Re Vassar Corp. USDC SD, N.Y.	Action to recover damages for breach of contract involving tribal enterprises of Eastern Bank of Cherokee Indians.	Case disposed of by payment of claim in full ($34,626.91).	Received Nov. 12, 1968; closed Feb. 20, 1969.
879. B. E. & Ruth Vaughn v. Don & Sue Fitzgerald, et al., Atoka Co. Dist. Ct., Okla.	Action to quiet title to, or recover possession of, abandoned railroad right-of-way.	Complaint dismissed as to United States	Received Mar. 28, 1968; closed May 6, 1968
880. Charles J. Vickers v. First National Realty & Constr. Corp., et al., Supr. Ct., Riverside Co., Cal.	Action to obtain adjudication of rights under lease of Indian lands.	do	Received May 9, 1962; closed Dec. 3, 1962.

881. Annie Walker, et al. v. William Sessions, et al., Seminole Co. Dist. Ct., Okla. Later removed to USDC, Okla.	Action to quiet title to restricted Indian lands against lien claimed of approximately $4,500.	Case disposed of by compromise. Interior Department released $4,500 from restricted funds of Indians in order to satisfy creditors. Liens then were removed.	Received Feb. 15, 1961; closed Apr. 25, 1963.
882. Charlie W. Ward, et al. v. Lyndon B. Johnson and Stewart L. Udall, USDC, ND, Ill.	Action to require President of United States and Secretary of Interior to carry out alleged 1906 agreement with Creek Indian Tribe.	Case dismissed on various jurisdictional grounds. Appeal to U.S. Superior Court. was ultimately dismissed.	Received Sept. 20, 1967; closed Aug. 5, 1969.
883. Re John G. Warner. No court. Alaska	Possible action to prevent foreclosure on chattel mortgages assigned to United States.	No litigation ever materialized from this matter and file was closed.	Received Dec. 15, 1967; closed June 7, 1968.
884. Warren Trading Post Co. v. Thad M. Moore. Sup. Ct. of Ariz.	Action to determine whether Indian trader on Navaho reservation is liable to pay Arizona transaction taxes on sales to Indians on reservation.	Superior Court of Arizona held that trader was liable for taxes. On appeal, U.S. Supreme Court reversed and ruled that trader was not liable for taxes. United States filed amicus brief on behalf of trader.	Received Dec. 11, 1963; closed May 25, 1965.
885.			
886. U.S. v. St. of Wash., USDC, WD, Wash	Action to quiet title to lands accreted to Indian homestead.	An initial judgment that United States was without capacity to sue because of invalid fee patents covering the land in question was reversed by 9th circuit. On remand the district court held that title had vested in State of Washington. The 9th circuit reversed a 2d time. State of Washington petition for certiorari was denied.	Received June 26, 1950; closed May 27, 1963.
887. St. of Wash. v. 16.25 acres of land in Yakima Co., Mary Emmett, et al. USDC. ED, Wash.	Condemnation of Indian allotment under 25 U.S.C. 357.	Judgment in amount satisfactory to Department of Interior ($3,888).	Received Sept. 12, 1962; closed Sept. 27, 1963.
888. St. of Wash. v. George Lagergren, et al., USDC, WD, Wash.	Condemnation of allotted Indian land	Stipulation and order of distribution entered ($1,400). Indian landowner had retained private counsel.	Received Dec. 21, 1968; closed Mar. 16, 1971.
889. St. of Wash. v. Richard Louis Snapps, et al., USDC, WD, Wash.	Condemnation of allotted Indian lands for highway	Case disposed of by compromise; payment of $73,107.25 received as full compensation for land in question.	Received Mar. 16, 1970; closed May 6, 1971.
890. US v. Moses C. Watts. USDC, ED, Okla	Action to quiet title to certain lands under Choctaw Termination Act.	Default judgment entered for plaintiff	Received Aug. 30, 1968; closed Feb. 16, 1970.
891. Wayne County Public Power Dis. v. A right of way 50 ft. in width over and across 2 par. of land in Thurston Co., Neb., USDC, Neb.	Condemnation of alloted Indian lands	Judgment in amount satisfactory to Department of Interior ($746).	Received Nov. 6, 1961; closed Feb. 8, 1962.
892. Fred J. Weibert v. Henry Weibert, et al., Dist. Ct., 13th Jud. Dist. Mont.	Suit by Indian lessee to compel Crow Indian lessors to recognize validity of lease considered invalid by Department of Interior.	Case dismissed on Government motion	Received Sept. 22, 1964; closed Nov. 10, 1965.
893. Re Hal Welch. No court. Okla	Proposed action to quiet title to certain lands under Choctaw-Chickasaw Termination Act.	Case returned to Department of Interior for further administrative action.	Received Aug. 3, 1966; closed Sept. 9, 1968.
894. US v. Frank Wellner. USDC, S.D	Action to enjoin sale of liquor without a tribal license.	Judgment for plaintiff	Received July 30, 1965; closed Oct. 4, 1966.
895. Edgar L. West, et al. v. Columbus Sawney, et al., Adair Co. Dist. Ct. Okla.	Action to quiet title to Five Tribes land	Judgment entered for Indian landowners (plaintiffs).	Received Nov. 14, 1967; closed Jan. 9, 1969.
896. Re Jerry White. Klickitat Co. Supr. Ct. Wash.	Request to represent Indian arrested for violation of Washington fishing laws.	Case disposed of by dismissal on motion of prosecuting attorney.	Received Oct. 14, 1966; closed Mar. 23, 1967.
897. White Mountain Apache Tribe. No court. Ariz.	Proposed action to recover overpayments under Indian timber contract.	Case was determined to be not proper for direct direct reference to U.S. Attorney. Tribe instructed to direct request for assistance through Department of Interior.	Received Dec. 2, 1964; closed Dec. 24, 1964.

ADDITIONAL CASES INVOLVING INDIAN WATER RIGHTS—Continued

Name of case or claim and court in which filed	Subject	Result or status	Remarks
898. US v. Rubin White, et al. USDC, ED, Okla.	Action to quiet title to Choctaw-Chickasaw tribal lands.	Judgment for plaintiff.	Received Jan. 7, 1965; closed Feb. 16, 1967. This was 1 of 3 quiet title actions against same defendants involving 3 separate trials. Other actions were consolidated with this one.
899. US v. Rudolph White USDC, Montana	Action to recover possession of land within canceled homestead.	Stipulation and order of dismissal entered after after defendant executed quitclaim deed to United States.	Received June 21, 1965; closed Dec. 19, 1966.
900. Robert A. Whitebird v. The Eagle-Picher Co. USDC, ND, Okla.	Action to recover royalties due on germanium, cadmium, sulphur, and other minerals mined by defendant under tribal mining lease (defendant held lease to mine lead and zinc but had also mined the other minerals beyond the terms of the lease).	United States was named as an involuntary plaintiff and obtained a dismissal as such. Since no request was received from Department of Interior regarding further participation in the matter, Justice Department file was closed.	Received Apr. 13, 1964; closed June 15, 1970.
901. Ethel Whiterock, et al. v. Stewart L. Udall, et al., USDC, ND, Cal.	Suit to require Secretary of Interior and Secretary of HEW to agree to build water distribution system for plaintiff Indians.	Judgment was entered upon stipulation that Government would construct water system. Previously, defendant had been ordered by court to supply plaintiffs with 12,000 gallons of water per week.	Received Jan. 30, 1969; closed Dec. 1, 1970.
902. M. K. Whittaker v. State of Wash. and US. Grays Harbor Co. Supr. Ct., Wash.	Action to quiet title to certain land under 28 U.S.C. 2410.	Case was found to be not within scope of sec. 2410 of title 28 and was dismissed on jurisdictional grounds.	Received Feb. 8, 1962; closed May 3, 1962.
903. US v. Douglas Wilcox, USDC, ND, Iowa	Action against tribal lessees to enjoin their use of land.	Case settled by compromise agreement to satisfaction of all parties. Stipulation of settlement entered.	Received Apr. 10, 1962; closed June 24, 1968.
904. Re Shirley Williams. No court. Utah	Action to recover delinquent operation and maintenance assessments on land in Uintah Irrigation project.	File closed due to withdrawal of request for action by Department of Interior.	Received Jan. 20, 1964; closed Apr. 23, 1964.
905. US v. Boone Wilson. USDC, ED, Okla	Action to remove former lessee from Indian allotment.	Order entered dismissing case after defendant vacated land voluntarily and paid $195 in lieu of rent.	Received Nov. 7, 1963; closed Jan. 9, 1964.
906. US v. Eliel & Eva Wilson, USDC, S.D.	Action to recover possession of house on tribal land; house owned by Indian but held by non-Indian under alleged contract.	Judgment for plaintiff.	Received Aug. 28, 1969; closed May 27, 1971.
907. US v. Frank and Lloyd W. Wood, et al. USDC.	Action to recover $1,922 royalties under a coal lease.	Judgment for plaintiff; $896 collected on judgment of $2,087.35. Case was held in abeyance until it was determined that further collection efforts would be futile.	Received Oct. 14, 1957; closed July 30, 1963.
908. Re Samuel Woodward. No Court. Washington.	Proposed action to cancel fee patent issued without consent of Indians, and to cancel tax deeds.	Case was returned to Department of Interior for possible negotiation of settlement.	Received Nov. 9, 1964; closed Feb. 1, 1967.
909. In the Matter of Mary Ann Jackson Wright. Klamath Co. Cir. Ct., Oreg. Later removed to USDC, Oreg.	Action to set aside determination by Secretary of Interior as to competency of Klamath Indian.	Stipulation and order of dismissal entered.	Received Aug. 23, 1961; closed Apr. 12, 1962.
910. Re Owen Yallup. Wasco Co. Supr. Ct., Oreg.	Request that United States represent Yakima Indian arrested for fishing in violation of State law.	Determination was made that defendant Indian had violated tribal fishing regulations, and decision was made not to defend him in State action.	Received May 24, 1966; closed Aug. 19, 1966. Similar decision was made regarding similar request from Wilfred Yallup.

911. Re William H. Yates. No Court. N. Mex.	Request for action to eject non-Indian married to Indian woman from pueblo on ground that he violated unwritten tribal law.	Case did not meet requirements of direct reference matter; file was closed pending formal request from Department of Interior.	Received Aug. 3, 1965; closed Feb. 4, 1966.
912. G. W. Yoder, et al. v. Assiniboine & Sioux Tribes of Fort Peck Indian Res., et al. Case reached Jus. Dept. on appeal to 9th Cir.	Action to enjoin Montana Conservation Commission from enforcing order affecting tribal oil and gas production.	Court of appeals held that there was no jurisdiction in district court because amount in controversy did not meet jurisdictional requirements. United States filed amicus curiae brief for defendants.	Received July 14, 1964; closed Apr. 2, 1965.
913. Russell Young v. U.S., et al., USDC, Mont.	Action to recover damages for alleged breach of agreement to lease tribal land to plaintiff.	Order entered dismissing case for want of prosecution.	Received Dec. 8, 1960; closed June 12, 1963.
914. Larry Holmes v. U.S., & Walter Hickel USDC, Oreg.	Action by Indian claiming quarter-section allotment to restrain administration over Oregon and California lands on grounds that Oregon and California Revesting Act is unconstitutional.	Case dismissed on Government motion.	Received Feb. 24, 1970; closed July 24, 1970.
915. Marguerite Murray Hendricks, et al. v. US, et al., USDC, Utah.	Class action by individual Ute mixed bloods for certain charges wrongfully paid to U.D.C. under leases for minerals under allotted lands.	Summary judgment for defendants.	Received Apr. 25, 1969; closed Dec. 3, 1969.
916. Govt. National Mortgage Association v. J. Maurice & Katherine L. McCabe, et al. USDC, Ariz.	Suit to foreclose mortgage on land in which Navaho Tribe alleged to have a leasehold interest.	Disclaimer of interest filed on behalf of tribe.	Received Feb. 4, 1969; closed Aug. 19, 1969.
917. US v. R. B. Fraser. USDC, Mont.	Suit by Indian lessee to compel Crow Indian lessors to recognize lease considered invalid by Department of Interior.	Stipulation and order entered dismissing complaint.	Received Nov. 5, 1964; closed July 31, 1967.
918. US v. Cherokee Wonderland, Inc., et al., USDC, WD, N.C.	Action to recover damages for breach of tribal business lease.	Judgment for defendant on claim of Government as well as on defendants counter-claim against certain tribe members.	Received June 11, 1964; closed Sept. 15, 1967. Decision of lower court was affirmed on appeal to 4th circuit, Solicitor General decided not to petition for certiorari.
919. Re Cherokee Indian Nation. No Court. Okla.	Possible action regarding the water rights of the Cherokee Nation to Grand (Neosho) River.	File closed after potential litigation did not materialize.	Received Oct. 16, 1964; closed June 30, 1966.
920. Clemente Segundo, et al. v. USDC, SD, Cal.	Action for allotments, allocation of water rights, and to collect rentals on allotment selections at Palm Spring Reservation, and to enjoin making of allotments by BIA.	Judgment of the court upheld BIA allotments, ordered allocation of water among allottees, and awarded plaintiff certain land rentals.	Received July 10, 1950; closed October 1961. Proceedings under which plaintiff's attorneys were awarded fees were not concluded until 1962.
921. U.S. v. Rudzek, Ronald Ray. USDC, W.D. South Dakota (Criminal Case).	A college student charged with beating 2 drunken Indians (1 died later) after being asked by deputy sheriff to help arrest 1 of them. (18, U.S.C. 242).	Acquitted on Sept. 22, 1970.	Received Apr. 28, 1970; closed Dec. 8, 1970.
922. U.S. v. Leonard T. Jackson. USDC, Arizona (Criminal Case).	Beating of Navaho Indian, arrested for drunkenness, by a Navaho policeman. Victim died the following day (18, U.S.C., 242).	Defendant found not guilty of a violation of 18, U.S.C. 242, on May 5, 1971.	Received Aug. 12, 1970; closed July 16, 1971.
923. U.S. v. Floyd Allan Frey USDC, Montana (Criminal Case).	Shooting of Indian, arrested for disturbing the peace, by white police chief. Victim sustained injuries of lower extremities (18, U.S.C., 242).	One count indictment returned Aug. 3, 1971.	Received Jan. 26, 1971 (awaiting trial).
924. Towersap v. Ft. Hall Indian Tribal Court USDC, Idaho (U.S.-amicus curiae) (Civil Case).	The complaint in intervention requests an order enjoining an Indian tribal judge and members of the tribal council from denying the plaintiffs the assistance of counsel, at their expense, and a speedy and public trial in the Fort Hall Indian Tribal Court 254, U.S.C., 1302 (Title II of 1968 Civil Rights Act).	Judge Taylor ruled that the tribal court's refusal to allow the Towersaps to engage a private attorney is unconstitutional. (Dec. 28, 1971.)	Received July 2, 1971; pending (tribal court may appeal).
925. U.S. v. Garfield Matthew Marshall USDC, W.D. South Dakota (Criminal Case).	Beating of Sioux Indian following arrest by white police officer. Victim subsequently died (18, U.S.C., 242).	Indictment returned on Nov. 23, 1971.	Received Aug. 3, 1971 (awaiting trial).

ADDITIONAL CASES INVOLVING INDIAN WATER RIGHTS—Continued

Name of case or claim and court in which filed	Subject	Result or status	Remarks
926. U.S. v. Inspiration Consolidated Copper Co. USDC, D. Arizona (Employment Case.)	Discriminatory employment practices against Indians and Mexican-Americans. (Title Vii, CRA 1964).	Trail concluded Apr. 6, 1971. Decision pending	Complaint filed July 24, 1970.
927. U.S. v. Household Finance Corp. USDC, N.D. Illinois (Employment-Housing Case)	Discriminatory employment and lending practices (Title VII, CRA 1964 and title VIII, CRA 1968) Indians involved in discriminatory lending aspect of case only.	Complaint-consent decree filed Feb. 29, 1972	
928. Locklare, et al, v. Culbreth, Robeson County Board of Education, HEW, et al. USDC, E.D.N.C. (U.S. defendent) (School Desegregation Case involving Robeson Co. and 5 City districts).	Lumbee Indian plaintiffs allege HEW-approved plan for 6 districts places burden of desegregation on Indian students. (14th Amendment suit alleging denial of equal protection).	Discovery. No trial date yet set.	Complaint filed September 1970.
929. George B. Brazie v. U.S. Dep't of the Interior. U.S.C.A. Ninth.	Petition filed with 9th circuit to set aside an anticipated order of the Department of Interior Office of Hearings and Appeals on disapproval of an Indian will.	Government moved for dismissal on grounds that proper forum in which plaintiff should seek relief was Federal District Court.	Plaintiff has since filed suit in USDC, E.D., California. Case is still open.
930. Ann Luxon v. Rosebud Sioux Tribe of S.D., et al. U.S.C.A., 8th.	Suit on a claim allegedly arising under Indian Bill of Rights, 25, U.S.C., 1301, et seq.	Issue on appeal was whether Federal district court had jurisdiction to consider suit. Government favored tribe on grounds that there was no violation of civil rights. Case was reversed and remanded on Feb. 9, 1972 for determination of whether there was violation of civil rights.	Case remains open.
931. Rosalind McClanahan v. Ariz. St. Tax Com'n. U.S. Supreme Ct.	Action to determine applicability of Arizonia income tax to nontribal income of Indians.	On Feb. 22, 1972 the court invited the Solicitor General to file amicus brief.	Do.
932. Rob't Moses, et al. v. St. of Washington. U.S. Supreme Court.	Action to determine whether Washington statute pertaining to fishing is unconstitutionally vague as applied to Indians and whether statue violates provisions of 1855 treaty on Indian fishing rights.	do.	Do.
933. Lewis Squally and Alvin Bridges v. St. of Washington. Supreme Ct. of Wash.	Action to determine whether Washington regulations, closing to net fishing the treaty-protected usual and accustomed fishing grounds of defendant Indians, while permitting commercial net fishing elsewhere on same runs of fish, are valid.	Reversed and dismissed, Oct. 1, 1970.	Government filed amicus brief on behalf of Indians.
934. Montana Power Co. v. Fed'l Power Com'n, and related cases, U.S.C.A. Tenth.	Appeal from F.P.C. ruling concerning renegotiated rental payments due Salish and Kootenai Tribes under license for hydro-electric project partially constructed on tribal lands.	Decision by 10th Circuit generally upheld F.P.C. ruling.	Certiorari denied by Supreme Court.
935. In Re Enoch Robinson. U.S. Supreme Court.	Appeal from decision of Nebraska Supreme Court denying writ of habeas corpus to Omaha Indian convicted of murdering another Indian on Omaha Reservation.	On Sept. 17, 1971 Solicitor General decided not to intervene, since in prior cases Supreme Court had indicated its preference that petitions for habeas corpus writs go from the State supreme courts to the Federal district court rather than on appeal directly to Supreme Court,	Certiorari denied by Supreme Court.

936. The Agua Caliente Band of Mission Indians, et al. v. The County of Riverside, USDC, CD Cal., C.A. 9, S. Ct.	Suit by the Indians to enjoin the imposition of the California Possessory Interest Tax on the lessees of the Indian land.	The district court and the Court of Appeals for the 9th Circuit refused to enjoin imposition of the tax. The Department of the Interior, on July 23, 1971, requested that we support the Indians' petition for certiorari. On Sept. 2, 1971, the Solicitor General declined to authorize submission of a brief amicus curiae in the absence of a request from the Supreme Court. On Oct. 12, 1971, the Supreme Court requested the Solicitor General to express the views of the United States. On Jan. 10, 1972, the Solicitor General filed a Memorandum for the United States as Amicus Curiae recommending against certiorari. On Feb. 22, 1972, certiorari was denied by the Supreme Court.	Received July 23, 1971; closed Feb. 22, 1972.

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